No. 99-401 (4)

In The

Supreme Court of the United States

CALIFORNIA DEMOCRATIC PARTY,
CALIFORNIA REPUBLICAN PARTY,
LIBERTARIAN PARTY OF CALIFORNIA
and PEACE AND FREEDOM PARTY, *et al.*,

Petitioners,

v.

BILL JONES, SECRETARY OF STATE OF CALIFORNIA
and CALIFORNIANS FOR AN OPEN PRIMARY, *et al.*,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

JOINT APPENDIX

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11/21/96 – Plaintiffs California Democratic Party, Torres, Bowler, and Jorjorian file their original complaint in the U.S. District Court for the Eastern District of California.

12/12/96 – Defendant Jones' original answer filed.

2/4/98 – Order permitting Californians for an Open Primary to file an answer in intervention.

2/4/98 – Original answer of intervenor-defendant/ Californians for an Open Primary.

2/5/97 – Complaint in intervention filed by plaintiffs-intervenors California Republican Party, Schroeder, Steel, Shalansky.

2/12/97 – Order permitting plaintiffs-intervenors California Republican Party, Schroeder, Steel, and Shalansky to file complaint in intervention.

3/10/97 – First amended complaint filed by plaintiffs California Democratic Party, Torres, Bowler, Jorjorian, Peace and Freedom Party, Weber, Libertarian Party of California, Lightfoot.

3/14/97 – Order permitting filing of first amended complaint joining Peace and Freedom Party, Weber, Libertarian Party of California, and Lightfoot as plaintiffs.

4/16/97 – Answer of defendant Jones and defendant-intervenor Californians for an Open Primary to first amended complaint.

5/7/97 – Answer of defendant Jones and defendant-intervenor Californians for an Open Primary to complaint in intervention.

5/29/97 – Order denying motion for reconsideration of order permitting Californians for an Open Primary to intervene.

7/22/97 – Order dismissing second cause of action in plaintiffs' complaint and in plaintiffs-intervenors' complaint.

7/28/97 – Court trial of action commenced.

10/3/97 – Oral argument to district court following post-trial briefing.

11/17/97 – Amended memorandum of opinion and findings of fact and conclusions of law entered by district court.

12/4/97 – Judgment entered by district court.

12/23/97 – Notice of appeal filed by plaintiffs.

12/24/97 – Notice of appeal filed by plaintiffs-intervenors.

1/27/98 – Order of Court of Appeals for the Ninth Circuit that plaintiffs' appeal and plaintiffs-intervenors' appeal be consolidated.

3/4/99 – Opinion and order of the Court of Appeals for the Ninth Circuit affirming judgment of the district court.

3/18/99 – Petition for rehearing with suggestion for rehearing en banc of plaintiffs/appellants California Democratic Party, Peace and Freedom Party, Libertarian Party of California, et al.

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6/4/99 – Order of court of appeals denying petition for rehearing and rejecting petition for rehearing en banc.

1/21/99 – Order allowing certiorari of the Supreme Court of the United States.

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEMOCRATIC PARTY, ART TORRES, KATHY BOWLER, PAUL JORJORIAN, Plaintiffs, vs. BILL JONES, Secretary of State of California, Defendant.	NO. CIV-S-96-2038 DFL PAN COMPLAINT IN INTERVENTION FOR DECLARATORY AND INJUNCTIVE RELIEF
CALIFORNIA REPUBLICAN PARTY, MICHAEL SCHROEDER, SHAWN STEEL, and DONNA SHALANSKY, Intervenors.	

JURISDICTION

1. Plaintiffs, including the California Democratic Party and certain of its officers and members, originally brought this action to protect their rights of political association, political expression, free speech, and their right to petition the government for the redress of grievances. These rights are guaranteed by the First and Fourteenth Amendments to the United States Constitution, by 42 U.S.C. section 1983, and by Article One, Section Three, and Article Two, Section Five of the California Constitution. Plaintiffs in intervention/intervenors include the California Republican Party and certain of its officers and members who are so situated that disposition of this action will as a practical matter impair or impede their ability to protect those same rights and interests. Accordingly, intervenors have the right to intervene on the side of plaintiffs under Federal Rule of Civil Procedure 24(a). Intervenors' claims also involve questions of law and fact common to those raised by the pending lawsuit. FRCP 24(b). Jurisdiction of the federal claims is conferred upon this Court by 28 U.S.C. sections 1331, 1343(a)3), 2201, and 2202. Jurisdiction of the state claims is conferred upon this Court by 28 U.S.C. section 1367.

VENUE

2. Venue for this action properly lies within the Eastern District pursuant to 28 U.S.C. sections 1391(b) and 1392(a) in that defendant resides in the State of California and in the Eastern District, and plaintiffs' and intervenors' claims arose in the Eastern District.

PARTIES

3. Intervenor CALIFORNIA REPUBLICAN PARTY ("Republican Party") is the duly authorized and officially recognized Republican Party of the State of California. It is an unincorporated association of individuals who have joined together to advance common political beliefs. The Republican Party nominates candidates for public office by primary election. Voting in the Republican Party primary elections is restricted by California Republican Party Rules to Republicans.

4. Intervenor MICHAEL SCHROEDER ("Schroeder") is the duly elected Vice-Chair of the Republican party and intervenor SHAWN STEEL ("Steel") is the duly elected Treasurer of the Republican Party. Intervenors Schroeder and Steel are registered to vote in California as Republicans. Said intervenors do not want to allow non-Republicans to vote for and choose Republican nominees for public office.

5. Intervenor DONNA SHALANSKY is a registered Republican voter in Sacramento County and regularly votes in the primary election. She does not want to allow non-Republicans to vote for or choose Republican nominees for public office.

6. Defendant BILL JONES ("Jones") is the Secretary of State of California. He is California's chief elections officer and administers the provisions of California's Elections Code. Among his duties is the enforcement of state election laws. He is sued in his official capacity only.

FACTUAL ALLEGATIONS

7. In March 1996, the California voters passed Proposition 198, which is a statutory initiative that adds or amends nine sections of the Elections Code. A true and correct copy of Proposition 198 is attached as Exhibit A.

8. Proposition 198 dramatically changes how primary elections are conducted in California including who may vote in them. It requires that in such elections any registered voter may vote for a candidate regardless of the voter's political affiliation. Each voter will be given the same primary ballot on which all candidates will appear. All candidates for a particular office will be listed together and identified by party affiliation. Voters will be able to vote for a candidate from one party for one particular office and, if they wish, for a candidate from another party for a different office. There is one exception: only party members will be allowed to vote for party central committee members.

9. The California Republican Party prohibits non-Republicans from voting in Republican primaries. In this regard article, I section 1.00(a) of the California Republican Party By-Laws states in pertinent part:

> The Committee shall recognize only those partisan nomination processes under California law that limit the electorate for partisan nomination elections to registered Republican voters, and which do not impose upon the Committee, without its express concurrence, a nomination process open to voters registered in other parties or as decline to state.

(See Exhibit B, By-Laws of the California Republican Party, attached hereto and incorporated by reference.)

10. The Republican National Committee also only recognizes Republican candidates nominated through a primary election at which only Republicans may vote, or if there is a non-partisan or open primary only those candidates "endorsed by convention held under the authority of the state Republican Party. . . . " See Exhibit C, the Rules of the Republican Party attached hereto and incorporated herein by this reference.

11. Unless this Court takes the actions requested herein, the Republican Party and its members will be deprived of their right to select their own candidates. Proposition 198 allows non-Republicans to cross party lines and choose Republican nominees. Accordingly, Proposition 198 will allow the nomination of "Republican" candidates who are not supported by a majority of Republican voters. Proposition 198 conflicts with the rules and by-laws established by the state and national Republican parties to govern their selection of candidates.

12. Proposition 198 is invalid and unenforceable because it violates intervenors' rights of political association, political expression, free speech, and their rights to petition government for redress of grievances. Defendant maintains that Proposition 198 is valid and enforceable and that plaintiffs and intervenors are bound by its terms. Thus, an actual controversy has arisen and now exists between the parties within the scope of 28 U.S.C. section 2201, in which the preservation of the constitutional rights of intervenors requires a declaration of the rights

and other legal relations of the parties, and specifically a declaration that Proposition 198 is unconstitutional.

13. Intervenors have suffered and will continue to suffer irreparable injury as a result of Proposition 198 and defendant's conduct. Intervenors have no plain, speedy, or adequate remedy at law. Accordingly, intervenors are entitled to injunctive relief which is necessary to preserve the status quo and their constitutional rights.

FIRST CAUSE OF ACTION

[First and Fourteenth Amendments to the United States Constitution]

14. Intervenors reallege and incorporate paragraphs 1-13 above.

15. Proposition 198 violates the First and Fourteenth Amendments to the United States Constitution because it denies intervenors their rights of association, of political expression, of free speech, and their right to petition government for the redress of grievances.

SECOND CAUSE OF ACTION

[Article One, Section Three, and Article Two, Section Five of the California Constitution]

16. Intervenors reallege and incorporate paragraphs 1-15 above.

17. Proposition 198 violates Article One, Section Three, and Article Two, Section Five of the California Constitution because it denies intervenors their rights of association, political expression, free speech, and their right to petition government for the redress of grievances.

RELIEF

WHEREFORE, intervenors pray for relief as follows:

1. That this Court declare that Proposition 198 violates the First and Fourteenth Amendments to the United States Constitution, and Article One, Section Three, and Article Two, Section Five, of the California Constitution.

2. That defendant and all others acting in concert with him be enjoined from enforcing Proposition 198.

3. That intervenors be awarded their costs, expenses, and attorneys' fees.

4. That this Court grant such other and further relief as the Court may deem just and proper.

DATED: January 24, 1997.

NIELSEN, MERKSAMER,
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BY: /s/ John E. Mueller
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C.T. WEBER, LIBERTARIAN PARTY OF
CALIFORNIA, and GAIL LIGHTFOOT

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEMOCRATIC PARTY, ART TORRES, KATHY BOWLER, PAUL JORJORIAN, PEACE AND FREEDOM PARTY, C.T. WEBER, LIBERTARIAN PARTY OF CALIFORNIA, and GAIL LIGHTFOOT,

Plaintiffs,

vs.

BILL JONES, SECRETARY OF STATE OF THE STATE OF CALIFORNIA,

Defendant.
_____/

NO. CIV-S-96-2038
DFL PAN

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(Filed March 10, 1997)

CALIFORNIA
REPUBLICAN PARTY,
MICHAEL SCHROEDER,
SHAWN STEEL, DONNA
SHALANSKY,

Intervenors/Plaintiffs,

_____/

CALIFORNIANS FOR AN
OPEN PRIMARY,

Intervenor/Defendant.

_____/

JURISDICTION

1. This action is brought to protect plaintiffs' rights of political association, political expression, free speech, and plaintiffs' right to petition government for the redress of grievances. These rights are guaranteed by the First and Fourteenth Amendments to the United States Constitution, by 42 U.S.C. section 1983, and by Article One, Section Three, and Article Two, Section Five of the California Constitution. Jurisdiction of the federal claims is conferred upon this Court by 28 U.S.C. sections 1331, 1343(a)(3), 2201, and 2202. Jurisdiction of the state claims is conferred upon this Court by 28 U.S.C. section 1367.

VENUE

2. Venue for this action lies within the Eastern District pursuant to 28 U.S.C. sections 1391(b) and 1392(a) in that defendant resides in the State of California and in the Eastern District, and plaintiffs' claims arose in the Eastern District.

PARTIES

3. Plaintiff CALIFORNIA DEMOCRATIC PARTY ("CDP") is the duly authorized and officially recognized Democratic Party of the State of California. It is an unincorporated association of individuals who have joined together to advance common political beliefs. For more than 100 years the CDP has nominated candidates for public office either by convention or, since about the turn of the century, by primary election. Voting in the CDP's primary elections (and before that participating in the CDP's nominating conventions) has always been limited to Democrats.

4. Plaintiff ART TORRES is the duly elected Chair of the California Democratic Party and plaintiff KATHY BOWLER is the Executive Director of the California Democratic Party. Plaintiffs TORRES and BOWLER are registered Democratic voters in California. Plaintiffs TORRES and BOWLER do not want to allow non Democrats to choose Democratic nominees for public office.

5. Plaintiff PAUL JORJORIAN is a registered Democratic voter in Sacramento County, California. He has been a registered Democrat for more than 25 years and regularly votes in the primary election. He does not want to allow non-Democrats to choose Democratic nominees for public office.

6. Plaintiff PEACE AND FREEDOM PARTY ("PFP") is the duly authorized and officially recognized Peace and Freedom Party active in the State of California. *See* California Elections Code §§ 7700 et seq. It is an unincorporated association of individuals who have joined together to advance common political beliefs. Since the

party's creation in 1967, PFP has nominated candidates for public office by primary election. Voting in PFP's primary elections has always been limited to Peace and Freedom Party members.

7. Plaintiff C.T. WEBER is the duly elected State Chairperson of the Peace and Freedom Party. He is a registered Peace and Freedom voter in California. Plaintiff WEBER does not want to allow non-Peace and Freedom Party members to choose Peace and Freedom nominees for public office.

8. Plaintiff LIBERTARIAN PARTY OF CALIFORNIA ("LPC") is the duly authorized and officially recognized Libertarian Party active in the State of California. It is an unincorporated association of individuals who have joined together to advance common political beliefs. Since the party's qualification for the ballot in 1980, the party has nominated candidates for public office by primary election. Voting in the party's primary elections has always been limited to Libertarian Party members.

9. Plaintiff GAIL LIGHTFOOT is a registered Libertarian voter in San Luis Obispo County, California. She has been a registered Libertarian since 1972 and regularly votes in the primary election. She does not want to allow non-Libertarians to choose Libertarian nominees for public office.

10. Defendant BILL JONES is the Secretary of State of California. He is California's chief elections officer and administers the provisions of California's Elections Code. Among his duties is to see to it that state election laws are enforced. He is sued in his official capacity only.

FACTUAL ALLEGATIONS

[DEMOCRATIC PARTY]

11. For more than 80 years Democratic nominees for public office have been chosen at primary elections where only DEMOCRATIC PARTY members could vote.

12. The CALIFORNIA DEMOCRATIC PARTY prohibits non-Democrats from voting in Democratic primaries. Article VIII, section 2(j) of the CDP By-laws states in pertinent part "Only those voters registered as Democrats may vote in the Democratic Party Primary."

13. Every four years the Democratic National Party of the United States holds a convention at which it nominates a candidate for President of the United States, nominates a candidate for Vice-President, and adopts a national platform. Article II, section 4(j) of the Charter and Bylaws of the national party require that convention delegates "be chosen through processes which . . . restrict participation to Democrats only[.]"

[PEACE AND FREEDOM PARTY]

14. The Peace and Freedom Party was founded on June 23, 1967, by people dissatisfied with the Republican and Democratic parties. A massive voter registration drive placed the Peace and Freedom Party on the California ballot in January 1968.

15. Today the goals of the Peace and Freedom Party are set out in the Preamble to its By-Laws:

> The Peace & Freedom Party is an open, multi-tendency, movement-oriented socialist party. We are united in our common commitment to

> socialism, democracy, feminism and unionism and our common opposition to capitalism, imperialism, racism, sexism and elitism. We recognize that we do not all agree on what we mean by "socialism" or on the strategies and tactics of how to get it. We do agree that it means we can have a world where we can all be part of the democratic decision-making on how the wealth of the economy will be used because we will be owners of it, as well as the cooperative self-managing co-participants in producing it.

See Exhibit B, Peace and Freedom Party State Central Committee By-Laws, attached hereto and incorporated by reference herein.

16. Article VI, section 2 of the By-Laws prohibits non-party members from voting in party primaries:

> ELIGIBILITY TO VOTE IN PRIMARY ELECTION
>
> Any Registered or Authenticated Member of the Peace and Freedom Party, as defined in Article I of these Bylaws, shall be eligible to vote in the Peace and Freedom Party Primary Election. Local County Clerks/Registrars of Voters shall provide means for Authenticated Members of the Peace and Freedom Party to cast a partisan ballot in the Primary Election.

Exh. B.

[LIBERTARIAN PARTY]

17. The Libertarian Party of California is an affiliate state party of the national Libertarian Party which was

formed in 1971 to promote the Libertarian political philosophy in American society through the mechanism of electoral politics. The LPC has been a ballot qualified party in California since 1980.

18. As an affiliate of the national Libertarian Party, the LPC must conduct its affairs consistently with the Libertarian Party Statement of Principles, the core statement of the party's guiding principles and purpose. The Statement of Principles (attached hereto as Exhibit C and incorporated by reference herein) states, in relevant part:

> We hold that all individuals have the right to exercise sole dominion over their own lives, and have the right to live in whatever manner they choose, so long as they do not forcibly interfere with the right of others to live in whatever manner they choose.
>
> Governments throughout history have regularly operated on the opposite principle, that the State has the right to dispose of the lives of individuals and the fruits of their labor. Even within the United States, all political parties other than our own grant to government the right to regulate the lives of individuals and seize the fruits of their labor without their consent.
>
> We, on the contrary, deny the right of any government to do these things, and hold that where governments exist, they must not violate the rights of any individual: namely (1) the right to live – accordingly we support prohibition of the initiative of physical force against others; (2) the right to liberty of speech and action – accordingly we oppose all attempts to abridge the freedom of speech and the press, as well as

government censorship in any form; and (3) the right to property – accordingly we oppose all government interference with private property, such as confiscation, nationalization, and eminent domain, and support the prohibition of robbery, trespass, fraud, and misrepresentation.

Since governments, when instituted, must not violate individual rights, we oppose all interference by government in the areas of voluntary and contractual relations among individuals. People should not be forced to sacrifice their lives and property for the benefit of others. They should be left free by the government to deal with one another as free traders; and the resultant economic system, the only one compatible with the protection of individual rights, is the free market.

Exh. C, p. 1.

19. Libertarian Party Bylaws prohibit non-Libertarians from voting in Libertarian primaries. In this regard, Bylaw 16, Section 6, states "In the event the party is legally required to participate in primary elections, only members of the Party shall be eligible to vote in the primary." *See* Exhibit D, Libertarian Party of California Bylaws, attached hereto and incorporated by reference herein.

[GENERAL]

20. In March 1996, Proposition 198 was adopted. Proposition 198 is a statutory initiative that adds or amends nine sections of the Elections Code. A true and correct copy of the March 26, 1996, Ballot Pamphlet concerning Proposition 198 is attached as Exhibit A and

incorporated by reference herein. (The full text of the initiative itself is located at page A-8.)

21. Proposition 198 requires that at all future primary elections any registered voter will be able to vote for candidates *regardless of political affiliation*. Each voter will be given the same primary ballot on which all candidates will appear. All candidates for, e.g., President, will appear together and will be identified by party affiliation. Voters will be able to mix and match as they go down the ballot. For example, a voter can vote for a Republican for President, a Democrat for California Assembly, a Green for the House of Representatives, a Peace and Freedom for U.S. Senate, and a Libertarian for California Senate, etc. The one exception is that only party members will be allowed to vote for party central committee members.

22. Unless this Court takes the actions requested herein, the PARTY PLAINTIFFS and their members will be deprived of their right to select candidates who best represent each PARTY's ideologies and preferences. Proposition 198 will allow the nomination of "Democratic," "Peace and Freedom" and "Libertarian" candidates who are not supported by a majority of those parties' voters. Proposition 198 will allow non-Democratic, non-Peace and Freedom, and non-Libertarian voters to cross party lines and choose nominees for the Democratic, Peace and Freedom, and Libertarian parties.

23. Proposition 198 creates the risk that the California Democratic Delegation will not be seated at future Democratic National Conventions because the Democratic National Committee Bylaws require delegates to be chosen by Democrats only.

24. The Elections Code requires that each person receiving a Peace and Freedom Party nomination for any partisan public office shall be declared elected as a member of Peace and Freedom Party central committees. Elections Code § 7755. Thus Proposition 198 forces the Peace and Freedom Party to accept central committee members who are elected by voters who are not members of the party.

25. Plaintiffs maintain that Proposition 198 is invalid and unenforceable because it violates their rights of political association, political expression, free speech, and their right to petition government for redress of grievances. Defendants maintain that Proposition 198 is valid and enforceable and that plaintiffs are bound by its terms. Thus an actual controversy has arisen and now exists between the parties within the scope of 28 U.S.C. section 2201, in which the preservation of the constitutional rights of the plaintiffs requires a declaration of the rights and other legal relations of the parties, and specifically a declaration that Proposition 198 is unconstitutional.

26. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of defendants' conduct. Plaintiffs have no plain, speedy, or adequate remedy at law.

Accordingly, injunctive relief is necessary.

FIRST CAUSE OF ACTION

[First and Fourteenth Amendments to the United States Constitution]

27. Plaintiffs reallege and incorporate everything above.

28. Proposition 198 violates the First and Fourteenth Amendments to the United States Constitution because it denies plaintiffs their right of political association, their right of political expression, their right of free speech, and their right to petition government for the redress of grievances.

SECOND CAUSE OF ACTION

[Article One, Section Three, and Article Two, Section Five of the California Constitution]

29. Plaintiffs reallege and incorporate everything above.

30. Proposition 198 violates Article One, Section Three, and Article Two, Section Five of the California Constitution because it denies plaintiffs their right of political association, their right of political expression, their right of free speech, and their right to petition government for the redress of grievances.

RELIEF

WHEREFORE, plaintiffs pray for relief as follows:

1. That this Court declare that Proposition 198 violates the First and Fourteenth Amendments to the United

States Constitution, and Article One, Section Three, and Article Two, Section Five, of the California Constitution.

2. That defendants and all others acting in concert with them be enjoined from enforcing Proposition 198.

3. That plaintiffs be awarded their costs, expenses, and attorneys'-fees.

4. That this Court grant such other and further relief as the Court may deem just and proper.

DATED: March 10, 1997

OLSON, HAGEL, FONG, LEIDIGH, WATERS & FISHBURN, L.L.P.

By: /s/ G.W.
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEMOCRATIC PARTY, et al., Plaintiffs, v. BILL JONES, Secretary of State of the State of California, Defendant.	No. CIV-S-96-2038 DFL PAN ANSWER OF SECRETARY OF STATE BILL JONES AND INTERVENOR/ DEFENDANT CALIFORNIANS FOR AN OPEN PRIMARY TO PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Defendant Secretary of State Bill Jones (defendant) answers plaintiffs' complaint as follows:

1. In response to paragraph 1, defendant denies that the challenged state statutes violate any rights of plaintiffs guaranteed by either the statutes or constitutions of the United States or the State of California. Defendant admits that the Court has jurisdiction of this action pursuant to 28 U.S.C. sections 1331, 1343, 2201, and 2202. Defendant denies that this court has jurisdiction of plaintiffs' state claims.

2. Defendant admits the material allegations of paragraphs 2, 10 and 20.

3. Defendant lacks sufficient information and belief to answer the allegations contained in paragraphs 3, 4, 5,

6, 7, 8, 9, 11, 12, 13, 14, 17, and 23, basing denial thereon generally and specifically denies each and every allegation contained in those paragraphs.

4. Defendant denies each and every allegation contained in paragraphs 22, 26, 28 and 30.

5. In response to paragraph 15 and 16, defendant avers that the Preamble to the By-Laws of the Peace and Freedom Party speak for themselves and denies each and every other material allegation of those paragraphs.

6. In response to paragraphs 18 and 19, defendants avers that the Libertarian Party Statement of Principles speaks for itself and denies each and every other material allegations to those paragraphs.

7. In response to paragraph 21, defendant admits that Proposition 198 will allow voters at primary elections to vote for all candidates for all partisan and nonpartisan offices, regardless of political affiliation, excepting candidates for party central committees. Except as thus expressly admitted, defendant denies each and every remaining allegation of paragraph 21.

8. In response to paragraph 24, defendant avers that Proposition 198 and Elections Code section 7755 speak for themselves. Except as thus expressly admitted defendant denies each and every other material allegation of paragraph 24.

9. In answer to paragraph 25, defendant admits that the positions of the respective parties are correctly alleged. Except as thus expressly admitted, defendant denies each and every other allegation of paragraph 25.

10. In response to paragraph number 27, defendant incorporates his answers to paragraphs 1 through 26, inclusive, as set forth above.

11. In response to paragraph number 29, defendant incorporates his answers to paragraphs 1 through 28, inclusive, as set forth above.

AFFIRMATIVE DEFENSES

By way of further answer to plaintiffs' First Amended Complaint, defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' First Amended Complaint For Declaratory and Injunctive Relief fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

To the extent that the challenged statutes govern the nomination of candidates for United States Senate or House of Representatives, the statutes are a permissible regulation of the time, place, and manner of holding such elections within the meaning of article I, section 4, of the United States Constitution.

THIRD AFFIRMATIVE DEFENSE

To the extent that the challenged statutes govern nomination of candidates for state or local offices, the power to so regulate such elections is reserved to the

State and People of California by the Tenth Amendment to the United States Constitution.

FOURTH AFFIRMATIVE DEFENSE

The challenged statutes advance important interests of the State and People of California and, to the extent they impose any burden whatsoever on cognizable constitutional rights, impose only a reasonable and nondiscriminatory restriction upon plaintiffs' asserted First and Fourteenth Amendments.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' Second Cause of Action, asking this Court to declare and enjoin alleged violations of the California Constitution, is not within the jurisdiction of this Court and is barred by the sovereign immunity provisions of the Eleventh Amendment.

WHEREFORE, defendant Bill Jones, Secretary of State of the State of California, requests the following relief:

1. The complaint for declaratory relief be denied, and Proposition 198 be declared constitutional;

2. The prayer for injunctive relief be denied;

3. The claim for costs, expenses, and attorneys' fees be denied, and that plaintiffs take nothing by this action;

4. Judgment be entered for defendant;

5. Defendant be awarded costs of suit and attorneys' fees pursuant to 42 U.S.C. section 1988; and

6. Defendant be awarded such other and further relief as this Court deems proper.

Dated: APRIL 14, 1997.

Respectfully submitted,

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEMOCRATIC PARTY, ART TORRES, KATHY BOWLER, PAUL JORJORIAN,

Plaintiffs,

v.

BILL JONES, Secretary of State of the State of California,

Defendant.

CALIFORNIA REPUBLICAN PARTY, MICHAEL SHROEDER, SHAWN STEEL, DONNA SHALANSKY,

Intervenor/Plaintiffs,

CALIFORNIANS FOR AN OPEN PRIMARY

Intervenor/Defendant.

CASE NO. CIV-S-96-2038 DFL PAN

ANSWER OF DEFENDANT SECRETARY OF STATE BILL JONES AND INTERVENOR DEFENDANT CALIFORNIANS FOR AN OPEN PRIMARY TO COMPLAINT IN INTERVENTION FOR DECLARATORY AND INJUNCTIVE RELIEF

Defendant Secretary of State Bill Jones and Intervenor/Defendant Californians For An Open Primary ("Defendants") answer Intervenor/Plaintiffs' Complaint in Intervention as follows:

1. In response to paragraph 1, Defendants deny that the challenged state statutes violate any rights of Intervenor Plaintiffs guaranteed by either the statutes or constitutions of the United States or the State of California. Defendants admit that the Court has jurisdiction of this action pursuant to 28 U.S.C. sections 1331, 1343, 2201, and 2202.

2. Defendants admit the material allegations of paragraphs 2, 6, 7 and 8.

3. Defendants lack sufficient information and belief to answer the allegations contained in paragraphs 3, 4, 5, 9 and 10, and basing denial thereon generally and specifically deny each and every allegation contained in paragraphs 3, 4, 5, 9 and 10.

4. In response to paragraph 11, Defendants admit that Proposition 198 will allow voters at primary elections to vote for all candidates for all partisan and nonpartisan offices excepting candidates for party central committees. Except as thus expressly admitted, Defendants deny each and every remaining allegation of paragraph 11.

5. In answer to paragraph 12, Defendants admit that the positions of the respective parties are correctly alleged. Except as thus expressly admitted, Defendants deny each and every other allegation of paragraph 12.

6. Defendants deny each and every allegation contained in paragraph 13.

7. In response to paragraph number 14, Defendants incorporate their answers to paragraphs 1 through 13, inclusive, as set forth above.

8. Defendants generally and specifically deny each and every allegation in paragraph number 15.

9. In response to paragraph number 16, Defendants incorporate their answers to paragraphs 1 through 15, inclusive, as set forth above.

10. Defendants generally and specifically deny each and every allegation in paragraph number 17.

AFFIRMATIVE DEFENSES

By way of further answer to Intervenor/Plaintiffs' Complaint in Intervention, Defendants allege as follows:

FIRST AFFIRMATIVE DEFENSES

Intervenor/Plaintiffs' Complaint in Intervention and Injunctive Relief fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSES

To the extent that the challenged statutes govern the nomination of candidates for United States Senate or House of Representative, the statutes are a permissible regulation of the time, place, and manner of holding such elections within the meaning of article I, section 4, of the United States Constitution.

THIRD AFFIRMATIVE DEFENSES

To the extent that the challenged statutes govern nomination of candidates for state or local office, the

power to so regulate such elections is reserved to the State and People of California by the Tenth Amendment to the United States Constitution.

FOURTH AFFIRMATIVE DEFENSES

The challenged statutes advance important interests of the State and People of California and, to the extent they impose any burden whatsoever on cognizable constitutional rights, impose only a reasonable and nondiscriminatory restriction upon Intervenor/Plaintiffs' asserted First and Fourteenth Amendments.

FIFTH AFFIRMATIVE DEFENSES

Intervenor/Plaintiffs' Second Cause of Action, asking this Court to declare and enjoin alleged violations of the California Constitution, is not within the jurisdiction of this Court and is barred by the sovereign immunity provisions of the Eleventh Amendment.

WHEREFORE, Defendant Secretary of State Bill Jones and Intervenor/Defendant Californians For An Open Primary request the following relief:

1. The complaint in intervention for declaratory relief be denied, and Proposition 198 be declared constitutional;

2. The prayer for injunctive relief be denied;

3. The claim for costs, expenses, and attorneys' fees be denied, and that Intervenor Plaintiffs take nothing by this action;

4. Judgment be entered for Defendants;

5. Defendants be awarded costs of suit and attorneys' fees pursuant to 42 U.S.C. section 1988; and

6. Defendants be awarded such other and further relief as this Court deems proper.

DATED: May 6, 1997

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By: /s/ Daisy C. Wu
Daisy C. Wu

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CALIFORNIA and GAIL LIGHTFOOT

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEMOCRATIC PARTY, ART TORRES, KATHY BOWLER, PAUL JORJORIAN, PEACE AND FREEDOM PARTY, C.T. WEBER, LIBERTARIAN PARTY OF CALIFORNIA and GAIL LIGHTFOOT,

Plaintiffs,

vs.

BILL JONES, SECRETARY OF STATE OF THE STATE OF CALIFORNIA,

Defendant.
_____/

NO. CIV-S-96-2038 DFL PAN

STIPULATION AND ORDER DISMISSING PLAINTIFFS' SECOND CAUSE OF ACTION

(Filed Jul. 28, 1997)

CALIFORNIA
REPUBLICAN PARTY,
MICHAEL SCHROEDER,
SHAWN STEEL, DONNA
SHALANSKY,

Intervenors/Plaintiffs,
_____/

CALIFORNIANS FOR AN
OPEN PRIMARY,

Intervenor/Defendant.
_____/

NOW COME ALL PARTIES to this action, by and through their counsel of record, and stipulate to the following:

WHEREAS, Defendant Secretary of State Bill Jones is the Chief Elections Officer of the State of California;

WHEREAS, the State of California is generally immune from suit in federal court under the Eleventh Amendment of the United States Constitution, unless such suit is specifically authorized or immunity is specifically waived; and

WHEREAS, there has been no specific authorization for suit against the State on claims arising from the California Constitution, and no waiver of Eleventh Amendment Immunity by defendant Jones;

THEREFORE, all parties hereby agree that the Second Cause of Action contained in Plaintiffs' First Amended Complaint and the Second Cause of Action

contained in Intervenor-Plaintiff's Complaint, both alleging violations of the California Constitution, shall be dismissed without prejudice.

OLSON, HAGEL, FONG, LEIDIGH, WATERS & FISHBURN

DATED: July 15, 1997

By: /s/ M B Moylan
GEORGE WATERS
MARY-BETH MOYLAN
Attorneys For Plaintiffs

OFFICE OF THE ATTORNEY GENERAL

DATED: July 14, 1997

By: /s/ Kyungah Suk
CYRUS J. RICKARDS
ALLEN SUMNER
KYUNGAH SUK
Attorneys For Defendant

NIELSEN, MERKSAMER, PARRINELLO, MUELLER & NAYLOR

DATED: 7-14, 1997

By: /s/ John E. Mueller
JOHN E. MUELLER
Attorneys For Intervenors/ Plaintiffs

GIBSON, DUNN
& CRUTCHER

DATED: 7/14, 1997

By: /s/ Kyungah Suk for
Daisy Wu
JAMES P. CLARK
DAISY C. WU
Attorneys For
Intervenor/
Defendant

ORDER

Pursuant to stipulation of the parties to this action, the Plaintiffs' Second Cause of Action and the Intervenor-Plaintiff's Second Cause of Action are hereby dismissed without prejudice.

IT IS SO ORDERED.

DATED: 7/21, 1997

/s/ David F. Levi
HONORABLE DAVID F. LEVI

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
[Caption Omitted In Printing]

PLAINTIFFS
EXHIBIT 5

REPORT OF

RICHARD WINGER

I. BACKGROUND: MINOR PARTIES IN CALIFORNIA

California has a rich history of minor party participation in elections. Minor parties appeared on the statewide ballot in every partisan statewide California election in the last 120 years, except only two elections. Only seven other states can say the same.[1]

Sixteen minor parties have nominated by primary in California. They are described below. The years in parentheses, following the party name, indicate the years the party placed nominees on the California general election ballot. The direct primary in California started in 1910. At the time, a party was qualified if it had polled at least 3% of the vote for any statewide candidates in the last general election, or if it submitted a petition signed by 3% of the last gubernatorial vote. The 1929 legislature (by a

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[1] In the last 120 years, the only states in which a minor party has appeared on the statewide ballot, in *all* years in which a regularly-scheduled election for presidential electors, governor or U.S. Senator, was held, are Michigan, Minnesota, New Jersey, New York, and Wisconsin. In Pennsylvania minor parties missed just one such election (1990), and in Massachusetts and California they missed two such elections (1978 and 1986 in Massachusetts, and 1964 and 1966 in California).

unanimous vote in both houses) lowered the petition requirement to 1% of the last gubernatorial vote, and added an alternate registration membership of 1% of the last gubernatorial vote. The 1937 legislature raised the petition alternative to 10% of the last gubernatorial vote, but kept the registration alternate at 1%.

1. *Socialist*, 1900-1938. The Socialist Party elected a few state legislators in California during the 1910's decade, and was, of course, the California branch of the Socialist Party, organized throughout the United States from 1900 to the present day. It stood for public ownership of the means of production, recognition of collective bargaining rights for labor unions, and a public social welfare system. The Socialist Party went off the ballot in California after the 1938 election because it failed to poll as much as 3% of the vote for any statewide office that year.

2. *Prohibition*, 1875-1964. The Prohibition Party elected a congressman from California in 1914, Charles Randall, and re-elected him in 1916 and 1918. The party also elected an Assemblyman in California in 1914. In 1932, the party's nominee for U.S. Senate, Rev. Robert P. Shuler, polled 25.8% of the vote and carried Orange and Riverside Counties. The party was the California branch of the Prohibition Party, organized throughout the United States from 1869 to the present day. The party favored a ban on the manufacture and sale of beverage alcohol. The party always believed that any law imposing prohibition would fail, unless a political party determined to enforce the law were in power. The party also felt that the governing political party should be composed of dedicated Christians, and argued that most Democratic and Republican

Party politicians are not truly dedicated to Christian principles. The party went off the ballot in January 1964, for failing to keep its registration above 1/15th of 1% of the statewide registration total.

3. *Independence League*, 1906-1910. The Independence League was financed by William Randolph Hearst to fight for progressive ideas, such as direct election of U.S. Senators, nomination by primaries, the initiative, the eight-hour workday, prohibition of child labor, workers compensation laws, a federal reserve bank, and anti-trust legislation. It polled 14.4% of the vote for Governor in 1906, but it fared poorly afterwards and had been abandoned by 1910.

4. *Progressive*, 1914-1918. The Progressive Party was formed in 1912 by former President Theodore Roosevelt, after Roosevelt failed to get the Republican nomination for president. The party stood for the initiative, recall, presidential primaries in all states, women's suffrage, limitations on campaign contributions, prohibition of child labor, the eight-hour workday, minimum wage laws, workers compensation laws, a federal reserve bank, and stronger protection for natural resources. The party wasn't formed in California until 1914 (there was no need for the party in California in 1912, since the California Republican Party bolted the Republican national ticket and declared Roosevelt to be its own nominee). In 1914 the Progressive Party nominated Hiram Johnson as its gubernatorial candidate, even though he was the incumbent and had been elected as a Republican in 1910. In 1914 Johnson defeated his Republican and Democratic

opponents. The Progressives also elected several members of the U.S. House and California legislature in 1914. The party ceased to be active after the 1916 election.

5. *Liberty*, 1932-1934. This party existed nationally only in 1932. It was organized to fight the depression by expanding the number of silver coins in circulation. It also advocated government ownership of banks, a five-year moratorium on mortgage foreclosures, demonitarization of gold, and a referendum before Congress could declare the nation to be at war. The party ceased to be organized after the 1932 election.

6. *Communist*, 1934-1944. Across the nation, the Communist Party ran candidates in elections from 1921 until the present. During the 1920's it was called the Workers Party. It was unable to qualify for the California ballot before 1934 because, before that year, it was unable to successfully obtain the signatures of 1% of the last gubernatorial vote (it had tried unsuccessfully in previous elections). Its 1932 platform called for unemployment insurance, emergency relief for the poor, a moratorium on mortgage foreclosure, equal rights for African-Americans and self-determination for that portion of the U.S. South which had African-American majorities, and for the creation of a workers soviet which would rule the nation. In 1943 the California legislature, motivated by a desire to eliminate the party, added a registration test (to be met in addition to the vote test) of one-tenth of 1% of the total state registration (no other party had registration under one-tenth of 1%). The Communist Party ceased to be qualified in March 1944 because it failed the new registration test. Nationally, the Communist Party continues to

exist, although it has not run a presidential candidate since 1984.

7. *Progressive*, 1934-1940. This Progressive Party (unlike Progressive Parties of the 1910's, 1920's, and 1940's decades) existed only in California. It was formed by U.S. Senator Hiram Johnson in 1933 because he feared that he could not be re-nominated by the Republican Party when he was up for re-election in 1934. As it turned out, he was more popular than he anticipated, and he won the nomination of three parties (Republican, Democratic and Progressive) in 1934. The Progressive Party elected Franck Havenner congressman from San Francisco in 1936, the last time a minor party won a partisan election in California. Havenner later switched his membership to the Democratic Party and was re-elected as a Democrat. Technically, the Progressive Party failed to be qualified after the November 1938 election, because it didn't poll as much as 3% for any of its statewide candidates, but due to an error by the California Secretary of State, it also appeared on the ballot in 1940.

8. *Commonwealth*, 1934-1938. Like the Progressive Party of 1934, this party was formed only in California, and for the specific purpose of backing a single candidate, Raymond L. Haight, for Governor in 1934, Haight, who was cross-endorsed by the Progressive Party, won the endorsement of the McClatchy newspaper chain and carried El Dorado, Fresno and Stanislaus Counties, but placed third with 13.0% of the vote. He presented himself as the moderate choice, standing between the conservative Republican incumbent and the Democratic nominee, Upton Sinclair, who had been the Socialist Party nominee for Governor in 1930. The Commonwealth Party had no

candidates in 1936 and only one in 1938. It ceased to exist because it failed to poll 3% of the vote in 1938.

9. *Townsend*, 1938-1942. It existed only in California and Connecticut; there was no national Townsend Party. The party was organized to support the Townsend Plan, advocated by Frances Townsend. The plan advocated pensions for every elderly person of $30 per month (nicknamed "Ham and Eggs"). Townsend argued that the recipients of the money would spend it, thus stimulating commerce and ending the depression. The party went off the ballot after 1942 for failing to meet the vote test.

10. *Independent Progressive*, 1948-1954. It was formed by former vice-president Henry Wallace, who became its first presidential candidate. It is the only party in California history that ever qualified by submitting a petition signed by 10% of the last gubernatorial vote (at that time, 275,100 signatures were required). It advocated a negotiated settlement of differences with the Soviet Union, an end to the peacetime draft, abandonment of military bases abroad, the outlawing of the atomic bomb, independence for Puerto Rico, a federal anti-lynching bill, a ban on poll taxes, lowering the voting age to 18, a food stamp program, a federal housing program, full political rights for members of the Communist Party, abolition of the House Un-American Activities Committee, an end to the Marshall Plan, and an end to segregation. It went off the ballot after 1954 for failing to meet the vote test.

11. *American Independent*, 1968-present. It was organized nationally by George Wallace, former Governor of Alabama, to serve as his vehicle for a run for the presidency in 1968. It was called the American Party in many other

states. It advocated the restoration of states' rights, a Constitutional amendment providing for election of federal judges, tighter law enforcement against urban rioters, a reduction in the size of the federal government, import restrictions to protect U.S. industry, the preservation of the family farm, school prayer, a lifting of sanctions against South Africa, and opposition to gun controls. Nationally, the American Independent Party no longer exists. The California branch of the party, still on the ballot, functions as the California unit of the U.S. Taxpayers Party, whose platform calls for the abolition of the Internal Revenue Service, for limiting the role of the federal government to those functions mentioned in the U.S. Constitution, and for an end to all legal abortions.

12. *Peace & Freedom*, 1968-present. It was organized in 1968 to nominate a presidential candidate who would oppose U.S. involvement in Vietnam. In 1971 the California PFP became the California branch of the Peoples Party, which advocated full rights for young people, the 30-hour week at 40 hours pay, free mass transportation, community board control over local police, an end to the draft, free medical care for everyone, the decriminalization of psychoactive drugs, an abolition of the Universal Code of Military Justice, and a bill of rights for prisoners. In 1974 the California Peace & Freedom Party formally declared itself in support of socialism. Various other socialist parties, too weak to qualify for the California ballot under their own banner, have frequently sought to persuade the Peace & Freedom Party to nominate their own candidates, and many contested Peace & Freedom Party primaries have been between the candidates of such parties, such as the Democratic Workers Party, the

Internationalist Workers Party, the Communist Party, the Socialist Party, the New Alliance Party, and the Workers World Party.

13. *Libertarian,* 1980-present. The party was organized in 1971, but it was not able to qualify for the California ballot until 1980. The Libertarian Party is the first minor party to place its presidential candidate on the ballot of all states, two elections in a row, since the Socialist Party last accomplished this feat in 1912 and 1916. Also, the Libertarian Party is the only minor party which has elected any state legislators in at least two states, in the last sixty years. The Libertarian Party's statement of principles, unchanged since 1972, states, "We hold that all individuals have the right to exercise sole dominion over their own lives, and have the right to live in whatever manner they choose, so long as they do not forcibly interfere with the equal right of others to live in whatever manner they choose . . . People should not be forced to sacrifice their lives and property for the benefit of others. They should be left free by government to deal with one another as free traders; and the resultant economic system, the only one compatible with the protection of individual rights, is the free market." Consequently, the party opposes involuntary taxation and would legalize victimless crimes.

14. *Green,* 1992-present. Green Party candidates first appeared on various ballots in the U.S. in 1986, but the party wasn't able to qualify in California until 1992. The party is based on four holistic principles, Ecology, Social Justice, Non-violence, and Participatory Democracy. The

party's "Ten Key Values" are ecological wisdom, grassroots democracy, nonviolence, social justice, decentralization, community-based economics, postpatriarchal values, respect for diversity, personal and global responsibility, and future focus. Its first presidential candidate, Ralph Nader, in 1996 based his campaign primarily on the need to end corporate domination of the economy.

15. *Natural Law,* 1996-present. The Natural Law Party was organized nationally in 1992, in the United States and in many foreign nations, by the Transcendental Meditation movement. It was unable to get on the California ballot until 1996. The platform calls for natural health care programs to prevent disease and promote health; natural, sustainable agriculture; renewable energy production and conservation; less crime and better education by the use of meditation in prisons and schools, and more research to discover effective solutions to various vexing social problems.

16. *Reform,* 1996-present. The Reform Party was proclaimed by Ross Perot in late 1995. Although the press has tended to treat the party as though it were organized only to support the Perot 1996 presidential candidacy, the Reform Party had hundreds of candidates for office other than president in 1996. It stands for campaign finance reform, expansion of the initiative process, a shorter campaign season, the elimination of the electoral college, elections held on weekends, greater prohibitions on lobbying by former government officials, smaller congressional pensions, the elimination of tax loopholes on favored businesses, controls on entitlements, and opposition to NAFTA.

II. MINOR PARTIES IN THE U.S.: WHY DO THEY RUN?

As the preceding section suggests, people join minor parties because they have strong ideas about what public policy should be, and they observe, to their regret, that neither the Democratic nor Republican Parties support those ideas. Most people who choose to be active in minor parties are reconciled to the likelihood that those minor parties will win few, if any elections to important policy-making positions. Nevertheless, activists in minor parties believe that by running for office, or supporting the election campaigns of their fellow party members, they are helping to move public policy in the desired direction. Minor party activity is a means by which advocates of new ideas, propagate those ideas.

There is substantial historical evidence to support the conclusion that persistent minor party campaigning can eventually influence public policy. The first minor party to advocate that slavery be abolished, the Liberty Party (which was launched in 1840), enjoyed very little support. Its presidential candidate aroused such hostility that he was forcibly prevented from speaking, not only in the South, but in the North. He only polled seven-tenths of 1% of the 1840 presidential vote total. But his campaign served to spread the abolition idea, to bring people who agreed with that idea into communication with each other, and to change the thinking of many ordinary people who otherwise would not have been exposed to the party's arguments.

One may note, upon reading Section 1 of this report, that many of the ideas advocated by the early minor parties,

have long since been adopted as public policy. Collective bargaining rights, women's suffrage, direct election of U.S. Senators, the eight-hour day, abolition of child labor, anti-monopoly legislation, an end to segregation, the initiative, and other ideas, faced overwhelming hostility and opposition when they were first advocated. All these ideas were advocated by minor parties, decades before the major parties accepted them, yet now we take them for granted.

III. NOMINATION OF MINOR PARTY CANDIDATES

Minor parties desire to nominate as candidates, those people who are most skilled at explaining the party's positions. Consequently, minor parties, especially ideological minor parties (and most minor parties are ideological), generally prefer to nominate candidates by convention, rather than by primary, since party officers and activists (the kind of people likely to attend a nominating convention) are more familiar with the personal characteristics of various potential candidates. Most states accommodate this desire. In 41 states, new or small political parties are permitted to place candidates on the general election ballot, with the party label, without nominating those candidates in a primary election. Only Alaska, California, Hawaii, Louisiana, Mississippi, North Dakota, Ohio, Oklahoma, and Tennessee, require that all parties must nominate all their candidates by primary (technically, the Louisiana primary doesn't even provide for party nomination of candidates; it functions as a general elected, with a later run-off if no one gets 50% in the first election). And Hawaii, one of these eight states,

at least provides that minor parties have the power to block anyone from entering the party's primary, if the party feels that the proposed candidate is not sympathetic to the party's views (for example, in 1994, the Hawaii Green Party blocked two candidates from running in the party's primary because the candidates were pro-life on the abortion issue, a stand which contradicted the party platform).

Since minor parties are forced to nominate by primary in California, they (or the candidates) attempt to mail campaign literature, describing differences between the candidates in important contested primaries, to all their registered voters, or to those registered voters who (based on past performance) are most likely to vote in the party's primary. Major newspapers and broadcasters in California generally do not cover contested minor party primaries at all. Therefore, rank-and-file registrants in minor parties (especially those who are not active in the party organization and do not attend party meetings, or receive the party newsletter) would have almost no basis for making a decision as to whom to vote for in the primary, if it weren't for direct mailings from the party or from the candidates.

Such mailings are very expensive, and minor parties don't have large budgets. Since before 1940, no minor party in California has held registration membership just prior to a primary, of as much as 1% of the number of registered voters in the state, with the sole exception of the American Independent Party (that party exceeded 1% in 1968 and also the period of 1978 to the present). Relatively small registration has meant that it is at least possible for the minor party, or a candidate in a contested

minor party primary, to communicate by direct mail with most of the party's registrants.

IV. CONTESTED MINOR PARTY PRIMARIES IN CALIFORNIA SINCE 1968

I have reviewed the *Statement of Votes* and the *Report of Registration* (official publications of the California Secretary of State) for all primary elections 1968 to the present. There are 102 contested minor party primaries in that period. Below is a chart setting forth the official totals for candidates in the 102 contested minor party primaries in California for the period 1968 to the present, the number of registered voters eligible to vote in each such contest, and the number of votes the party's nominee for that same office received in the general election:

[Table Omitted In Printing]

* * *

V. CONCLUSIONS FROM THE CONTESTED PRIMARY DATA

1. Contested minor party primaries in California are not rare.

2. Relatively few voters cast ballots in minor party primaries in California, compared to the number of people who vote for minor party nominees at the general election for the same office. The total vote cast in the contested minor party primaries, above, is only 443,785, whereas the general election vote for the winners of these contested primaries is 4,822,380. It is true that voter turnout in primaries is lower than it is in general elections; turnout in primaries in California is usually only about

60% of the general election turnout. But that factor alone cannot account for the huge (one to eleven) disparity in votes cast for minor party candidates in California primaries, versus the number cast for them in the general election.

3. In the 99 instances at which there was a contested minor party primary which produced a general election nominee, the party's general election vote was greater than the party's registration (as of the primary date) in 78 instances. Only in 21 instances was the party's general election vote smaller than its registration. The total of all registration figures in the chart above (for the 99 instances at which there was a contested minor party primary which produced a general election nominee) is 2,656,550, substantially less than the general election vote totals above of 4,822,380.

4. When point two and point three are considered together, it is obvious that a large majority of people who have voted for minor party nominees in general elections, are not registered members of those minor parties and could not vote in the primaries of those minor parties in 1996 and previous years. However, under California's new law, they will be able to vote in minor party primaries.

5. Many contested minor party primaries are extremely close. Note there are two examples above in which the winner defeated the loser by only *one* vote (American Independent, 1970, State Senate 6; and American Independent, 1970, Assembly 43). Forty-four contested primaries had margins of fewer than 100 votes.

CONCLUSION AND OPINION

In my opinion, if the new California primary law goes into effect, the vote for minor party candidates in primary elections will be *much* higher than it has been in the past. The new voters will not be party members. As a general proposition, I believe that minor party members voting in their own primary will be outnumbered by non-party members. Even where they are not outnumbered, the proportion of non-party voters will be very high – much, much higher than in major party primaries.

This will have devastating effects on the minor parties. It will, in the most fundamental way, deny party members the right to choose their own nominees. If the non-party voters have malicious intent, they will frequently be able to alter the result of a minor party primary because, as the chart set forth in section IV above shows, those primaries are frequently decided by a small number of votes. Even if the non-party voters are sympathetic to the party, they will almost certainly lack knowledge of the minor party candidates because they will not have received mail from the party. Even a small number of such voters could easily defeat the choice of party members.

Thus the new primary law will dilute the message of minor parties. One reaction to this might be to say "So what? The minor parties seldom win partisan elections anyway." As I have shown above, minor parties are generally ideological entities that have played an important role in introducing new and (at least initially) unpopular

ideas into our political culture. I believe that any restriction of that role strikes at the very heart of the minor parties' reason for existence.

In my opinion, Proposition 198 will harm California's minor parties by flooding their primaries with voters who lack knowledge of their candidates.

/s/ Richard Winger
Richard Winger
May 29, 1997

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

[Caption Omitted In Printing]

PLAINTIFFS
EXHIBIT 6

EXPERT REPORT OF BRUCE CAIN

June 4, 1997

REPORT ON BLANKET AND OPEN PRIMARIES

Bruce E. Cain
UC Berkeley

With the passage of Proposition 198 in March 1996, California adopted an unusual method for nominating partisan candidates – the blanket primary. The blanket primary allows independent and partisan voters to vote for candidates from any party that qualifies for the ballot. This means, for instance, that Democrats can vote in Republican party primary races, or that voters from large parties can vote in primary races for small parties such as Peace and Freedom. Only two other states employ this system specifically – Alaska and Washington – and one other state, Louisiana, uses a slight variant, the nonpartisan primary (so-called because the top two vote-getters advance to the general election regardless of their party affiliation unless one of them gets more than 50% of the vote).

The blanket primary lies at the far "open" end of a procedural spectrum that ranges from closed candidate selection by party activist caucuses at the one end to open elections by primary voters at the other. Because it prevents the parties from protecting themselves against

encroachments from opposing party voters, the blanket primary is the most burdensome of the ostensibly partisan nominating procedures with respect to party rights and operations. Allowing voters from other parties to determine another party's nominee infringes upon that party's basic right to determine its own ideas and policies. Only a purely nonpartisan process that eliminated party labels entirely would infringe to a greater degree on the parties' rights to control their own political viewpoints. Moreover, there is no evidence that the blanket primary affords indisputable advantages over other less burdensome forms of primary selection. California voters could adopt any number of other forms of primary procedures (e.g. open, semi-open, semi-closed) that would open up the process to independent voters without violating the first amendment freedom of parties so extremely.

ASSESSING THE EFFECT OF THE BLANKET PRIMARY ON CALIFORNIA'S POLITICAL PARTIES

The problematic nature of the alleged benefits of the blanket primary system would matter less if this unique procedure did not so substantially and unnecessarily infringe upon the autonomy of California political parties. Political parties are ideally teams of reasonably like-minded individuals who come together to cooperate and coordinate their activities in order to achieve their political ends. Whether the origins of political parties are internal (i.e. develop out of legislative factions) or external (i.e. develop out of electoral coalitions or extra-political organizations such as labor unions), they exist to perform

certain key functions (Duverger, 1954). First, political parties nominate individuals as official candidates in order to represent their ideas and interests in the election. In the cases of minor parties and major parties in hopeless seats (i.e. where the result in November is inevitable), the nomination act is more for the purpose of making a statement about principles and ideals than it is about picking a likely winning candidate. Such issue candidacies serve an important role in fostering educative debate during an election; a contest between candidates espousing essentially similar centrist views does not further the ideal of J.S. Mill's "free market place of ideas" as effectively as one that has at least a few issue-oriented candidates who place principles ahead of winning. Nomination is a form of political message. In this sense, the closed primary allows for the purest expression of the party's message. Allowing members of other parties to participate in a given party's primary surrenders control over that message to the party's opponents and threatens the vitality of political debate. Most members of minor parties do not join these organizations because they think their party will win. Rather, they belong to parties because they want to support candidates who will give voice to their ideas and ideologies.

Secondly, parties give nominated candidates a designation in the form of a party label that provides an extremely important information cue for voters. Even in the current era, a candidate's party label is one of the most important pieces of information that a voter can have about candidates and their likely actions in office (Campbell et al., 1960; Miller and Levitan, 1976). Party

labels evoke images in voters' minds about what candidates stand for and how they will behave once in office. Voters in California typically face a potentially bewildering array of candidates. Few, if any, have the time and the resources to inform themselves fully about each and every issue position candidates may be taking (Fiorina, 1981; Lupia and McCubbins, 1996). Knowing that Mr. C is a Democrat gives the voter a basis for expecting where Mr. C stands both on various issues and on the role of government more generally. The right to bestow the official party label upon candidates is critical to its ability to control who gets to represent the party and what that party label means to voters over time.

The third function of parties is to mobilize resources and supporters to help their nominated candidates win election. The centrality of the official party organization in providing resources to candidates fluctuates over time. In the last two decades, candidates themselves raised much of the money they needed for election, and field activities by party loyalists became less important. However, aspects of the federal campaign finance law and the recently enacted Proposition 208 seem unintentionally to be putting parties back in the center of the campaign resource picture. The 1996 Presidential election brought record amounts of so-called "soft money" contributions to state parties, and Proposition 208 has given the parties the opportunity to replace individual contributors as major fund-raising sources in the state. Aside from special interests that give to further self-interested policy goals, the other major motivation for giving is ideological – i.e. people or groups giving because they believe in the party's ideals and policies (Sorauf, 1988). Undercutting

the role of party members in the nomination of their own party's candidates potentially weakens the incentive for ideological giving and leaves the system even more vulnerable to special interest donors.

Finally, political parties provide a framework for cooperation among elected officials once in office. When the primary ballot restricts shopping across party lines, voters have to think about elected officials as a team, fostering a sense of collective responsibility for policies and positions (Haeberle, 1985). Although denied the option to choose at will in the primary, voters are still free to pick and choose across party lines in the November election. By constraining themselves to party slates in the primary, voters preserve the option of picking a reasonably like-minded team of elected officials in the fall that will work together to realize certain policy ends. If voters can cross party lines in the primary, it weakens the ability of party members to select a coherent team, and ironically, takes away an option for voters in the fall campaign.

The blanket primary affects all of the essential party functions in important, adverse ways. Because it opens the selection to independents and supporters of other parties, it is inevitable that parties will be forced in some circumstances to give their official designation to a candidate who is not preferred by a majority or even plurality of party members. For example, assume an Assembly district with 35,000 registered Democrats, 80,000 Republicans and 20,000 independent and other party identifiers. Assume also that there are two candidates running in the Democratic primary – Mr. A, a liberal, and Mrs. B, a conservative. By themselves, the Democrats might prefer

Mr. A 70% to 30%, but if only a quarter of the non-Democrats cross over to the Democratic primary (because, for instance, the race on the Republican side is uncontested) in order to support Mrs. B, the Democratic party could be forced to give its official party label to a candidate who is opposed by a vast majority of registered Democratic voters in the constituency. This is called "swamping."

The inability to control who makes the party's selection of candidates then affects the second essential party function – i.e. the right to control the party label. Years of political science research reveals that the party label is used by many voters as an information short-cut or heuristic (i.e. it helps voters know what candidates stand for without investing in information about all of their specific policy positions. See Lupia and McCubbins, 1996). Hence, losing control over who gets the label amounts to losing control in an important way over what the party stands for and what is communicated to voters about the parties. Under the circumstances of my hypothetical example, it would not be surprising if many of the 80% of the Democratic registered voters who supported Mr. A became disillusioned and refused either to work for or give resources to the election of the party's nominee whom they did not support. In turn, the third of the four essential party functions discussed above would be impaired. Finally, the fact that Mrs. B, if elected, owes her nomination to independents and Republicans weakens her incentive to cooperate or associate closely with other Democratic legislators, eroding party discipline in the legislature and weakening norms of collective responsibility (i.e. the fourth party function).

The blanket primary procedure is more violative of party rights than other forms of open primary, because it substantially lowers the costs of strategic actions. All other forms of open primaries require voters at some point to declare in which party's primary they wish to participate in. The cost of crossing over to influence one race is that the voter can only vote in that one party's primary. However, in the blanket system, the voter does not lose the opportunity to vote in his or her preferred party primary just because he or she wants to cross-over in any particular political race. Hence, the temptation to cross-over unaided by elites is greater in the blanket and nonpartisan races than in other open primary procedures. If in addition, political consultants and party leaders provide encouragement and direction, the incentive to vote strategically will be enhanced significantly.

There are two major types of cross-over behavior. The first is "shopping" which is when voters of one party cross-over to another party's primary to support the candidate whose positions they most prefer. Thus, if Republicans cross-over to the Democratic primary to support the more conservative candidate, or if Democrats cross-over to the Republican primary to support the more liberal candidate, then these would be cases of what I would term "shopping." If enough shoppers cross-over to determine the outcome of the party's primary, shopping can be decisive, and it becomes "swamping." The other form of cross-over behavior can be called "sabotage" or "raiding," which is when voters in one party cross-over to participate in another party's primary in order to elect the "weaker" candidate so that their party's candidate can prevail in November. I call it sabotage for the obvious

reason that the purpose of crossing over is not to support a preferred candidate, but to influence the outcome by forcing the other party into a weaker position.

The conditions that are most ripe for both "shopping" and "sabotage" are similar, but not identical. The key strategic condition is what I call "asymmetric competitive conditions." If one party has an uncontested race and the other a contested race, then voters who would normally participate in the uncontested race will feel more tempted to put their vote where it counts. Both shopping and sabotage are forms of strategic behavior in the sense that voters are motivated by their expectations of where their votes will count the most and not just by their policy preferences per se. Most studies of cross-over voting suggest that "shopping" is more prevalent than "sabotage" (Hedlund and Hedge, 1982; Hedlund and Watts, 1986). Recent Field Poll studies on the upcoming 1998 Senate and Gubernatorial races suggest that as many as a third of the voters may cross-over (Field Poll, Feb. 25, 1997). As discussed earlier, if enough voters "shop" across party lines, it is inevitable that parties will be stuck with nominees that their members did not prefer.

Instances of "sabotage," while less frequent, are important and especially violative of party autonomy and rights. For instance, in the Alaska Gubernatorial primary of 1974, a large number of Democrats and independents abandoned a Democratic primary that featured a virtually unopposed Democratic incumbent in favor of voting in a contested Republican primary that featured a former Governor, Walter Hickel, and a liberal Republican, Joey Hammond. Even though there were 49,000 registered Democrats, there were only 22,370 votes cast in the

Democratic primary. By comparison, there were 60,107 votes cast in the Republican primary even though there were only 26,500 registered Republicans. Hammond prevailed over Hickel 28,602 to 20,728. This can be viewed either as a case of liberal shopping that saddled the Republicans with a choice they would not have made themselves or as sabotage in the sense of helping the candidate with a weaker background. Either way, it raises serious questions about party rights and autonomy under the blanket system.

Looking at California, we can ask how likely the conditions are that encourage these types of cross-over behavior. First, I would note that we have seen attempts to sabotage other party prospects in California in recent years. Scott Baugh, a Republican Assemblyman from Newport Beach, was accused of trying to encourage a Democratic candidacy in a special election in order to divide the Democratic vote and protect Republican prospects. Or to take another example, Republican opponents of Brian Setencich may have encouraged the candidacy of a euphonious competitor, Brian Steiner, in order to confuse potential write-in voters. Given the perceived stakes of controlling the legislature, it is clear that candidates and consultants will play "hard ball" tactics when they have to in order to win.

Second, the specific conditions that are ripe for cross-over voting occur frequently enough that the temptation will be present at every primary election. Those conditions are: (1) Asymmetric competitive conditions (i.e. one competitive primary and one uncompetitive), and (2) A likely competitive race in November. In the 1996 Assembly primaries, I identified ten races that fulfilled the first

condition and four that also fulfilled the second condition: Districts 1, 8, 43 and 53. Of the ten asymmetric cases, one featured an uncontested race in the party that was certain to win in November (AD 65), and hence there was no reason to interfere in the contested primary. In five other cases (ADS 11, 14, 30, 52, 71), the uncontested race was in the party of the likely loser in November and the contested race was in the party of the likely winner. These cases are ripe for "shopping," in which voters might try to get the best deal they can in the party that is likely to win in November. Those in the likely losing party could be assured of having a standard-bearer for their party while at the same time having the chance to influence the outcome of the opposition party primary. The remaining four cases feature both asymmetric competitive primary conditions and a likely competitive race in November. Party members in the uncompetitive primary could have interfered in the decision of the party with the competitive primary to help elect the weaker candidate if they chose to. In all but one case, the outcome could have been changed by the intervention of less than 5% of the other party's registered voters. In other words, a small degree of strategic coordination could have tipped the outcome in the contested primary. This would have given the party with the uncontested primary the power to dictate the candidates of both their own and the opposition party. This is hardly what we mean by increasing choice in a democracy.

It seems clear to me that the potential harms to parties under the blanket primary are quite severe. It is not surprising that both major and minor parties would resist rules that allow members of opposing parties to

vote in their primaries. Parties will likely be forced to accept as their nominated candidate individuals who are not preferred by their members, or worse, candidates that were dictated to them by the opposing party in order to weaken their prospects in the November election. Given that the alleged benefits of the blanket primary are disputable and the potential harms are significant, it is reasonable to ask whether the aims that voters sought to achieve through the passage of Prop 198 could not be achieved through mechanisms that are less burdensome to the parties.

ASSESSING THE ALLEGED BENEFITS OF THE BLANKET PRIMARY

Those who defend the blanket primary system typically assert that is has advantages over other forms of selection: that it produces more moderate candidates; it enhances voter participation; it gives voters a wider range of choices; and it promotes the secrecy of the ballot. However, I find that these claims are neither empirically proven nor normatively indisputable.

With respect to the tendency to produce more "centrist" candidates, there is clear political science evidence that rule changes can affect the positions that party candidates take. A recent study by Barbara Norrander suggests that there may be a higher tendency for states that employ caucus nomination systems to give greater support to more ideologically distinct candidates than states with primary elections (Norrander, 1993). Another study by Elizabeth Gerber and Rebecca Morton suggests that

the same is true for closed versus open primaries (Gerber and Morton, 1997).

However, there is no consensus in democratic theory that additional ideological moderation is needed in a system that already encourages centrism in many ways, especially given that Prop 198 would seek to achieve this moderation by allowing opposition party members to interfere in another party's nomination process at will. Those who argue for additional moderation assume without proof that there is a need in California to reduce further the risks of November elections between candidates with ideologically extreme views. Occasionally, candidates that are less centrist than others win their primary nominations, but usually they lose in the November election if the other party nominates a centrist candidate of their own. In fact, there are many informed observers who think that the problem in California is exactly the opposite: i.e. they lament the lack of distinct choices in American politics and feel that the system shuts out legitimate points of view that do not fall in the middle of the ideological spectrum.

Since the publication of Anthony Downs' seminal book, *An Economic Theory of Democracy*, political scientists have come to appreciate the strength of the median voter effect in American politics (Downs, 1957). Median voter theorems suggest that candidates who take positions closer to the median (i.e. center or mid-point) of an ideological spectrum will tend to defeat those who do not, assuming single-member, simple plurality voting rules and voters who prefer candidates whose positions are closest to theirs. Sometimes this means that primary voters will choose candidates who seem to be more

potentially electable in November based on how mainstream their views are (see, for instance, the 1990 Democratic Gubernatorial primary between Feinstein and Van de Kamp, as described in Lubenow, 1991). In other instances, it means that candidates will try to move to the center after the primary in order to appeal to the swing voters in November (e.g. as Herschensohn did against Boxer in the 1992 US Senate contest). My point quite simply is that pressures to move to the center are already quite strong in California politics, and hence, it is not obvious that there is a need for additional centrist pressures.

Moreover, the mechanism that Prop 198 uses – cross-over voting by opposition party members – interferes with the impacted party's first amendment right to determine what it stands for. Whether the opposition party members are merely shopping or engaging in sabotage, they will determine by their cross-over vote what the impacted party stands for. The impacted party has lost its ability to determine its message.

A second purported benefit is that the blanket primary would increase the level of participation in primary elections. Here, we need to make a critical distinction to avoid confusion; namely, between overall turnout in a primary (i.e. the number of individuals who participate in the election) and race-specific turnout, or dropoff (i.e. the number of individuals who vote a specific office such as President, Governor, etc.). Even in a completely open system, race-specific turnout will typically be less than overall turnout for any number of reasons (e.g. disinterest in the race, ballot fatigue, lack of suitable alternatives, etc). It would seem almost tautological to state that

race-specific turnout should increase with the addition of independents. However, because it is possible that core party activists under a blanket primary system could become so alienated by the prospect of independents swamping the nomination process, decreases in activist participation might offset the gains in independent participation. But short of that depressing scenario, the number of individuals voting in partisan primary races should go up. But will it go up dramatically? A study of Senate races found that turnout in states with blanket and nonpartisan rules only had a turnout 7.2% higher than closed primary systems and 2.3% higher than those with other open systems. (Kenney, 1986). Lack of enthusiasm among the partisans may not completely offset the addition of independents, but it may diminish the potential effect considerably.

But the more interesting and important question is whether overall participation will increase. There have been many studies of participation over the last thirty years (Wolfinger and Rosenstone, 1980; Nagler, 1991; Leighly and Nagler, 1992; Texeira, 1989). None of them has ever asserted that the nomination process type is as important a determinant of whether people vote as are socioeconomic factors such as age and education, or structural factors such as the ease of registration requirements in a given state. This means that there are much more direct, effective ways to increase voter participation (e.g. mandatory voting, same-day registration, etc.) that are less burdensome with respect to party rights and autonomy (see, for mandatory voting, Hirczy, 1994).

For all of the above reasons, having a blanket primary system does not guarantee a high primary turnout

in either the general or race-specific sense. If we compare across Gubernatorial primaries in 1994, for instance, we find that Alaska with a blanket primary had a turnout of 32% while California with its closed system had a turnout of 31%. States with closed primary systems had a wide variance, ranging from a high of 42% in New Mexico's Gubernatorial primary to a low of 12% in New York's. Clearly, there are many other factors at work in determining the turnout level, and at best, the type of primary is a marginal factor.

Moreover, there is a good reason to suspect that the effect of changing from a closed to a blanket system will be even more marginal in California, especially with regard to overall primary participation. Unlike many other states, California offers voters reasons to go to the polls other than the chance to participate in partisan elections per se. For instance, primary ballots usually contain a number of state and local initiatives and referendums. In addition, some cities and counties hold their nonpartisan elections on the day of the statewide primary. As a consequence, the number of independent voters who participate in California primary elections is already significant.

One suggestion of this comes from the Field Institute's pre-election polls. In pre-election polls prior to the 1994 and 1996 primaries in California, the Field Institute found that 74% and 75% respectively of those registered as decline to state indicated that they were absolutely or fairly certain that they would vote in the upcoming primary election. This is somewhat less than what those registered as Democrats (90% and 85% respectively), and as Republicans (88% and 85% respectively) indicated, but

it impossible to say whether even this modest difference is due to the exclusion of independents from partisan races or to other factors such as their overall lower levels of interest in and attentiveness to politics (Keith et al., 1992). While pre-election polls do not tell us directly who actually voted in the primaries, it does gives us evidence about the intentions of decline-to-state voters. Judging by the gap between votes cast at the top of ticket in the partisan primary races and the total votes cast in 1994, I estimate that nonpartisan turnout was about 10% less than the overall average. Opening up partisan races to independent voters may provide a marginally stronger incentive to participate, but the increases are unlikely to be dramatic.

The last two common arguments in favor of the blanket primary are not essentially empirical claims. The first is that the blanket primary offers a wider range of choices to voters since Democrats are not restricted to voting for Democratic candidates, Republicans to Republican candidates, etc. In a certain purely quantitative sense, this is indisputable. If a voter can vote in any primary that he or she wants to, then it follows that he or she will have more choices than a person who is restricted to voting in one party's primary. However, in another more qualitative sense which I discussed earlier, blanket and open primaries could actually work to restrict choices in November more than closed primary systems do. If, as Gerber and Morton's work suggests the likelihood of nominating candidates who are further from the median is lower in open than in closed primary systems, whatever gains voters get in terms of the number and variety of choices in the primary will be offset by the lack of distinct and

meaningful choices in November. It is important to bear in mind that the right that the blanket primary preserves is the right to pick and choose between party races over the entire ballot. If California wanted to preserve the right to enter a given party's primary without violating the integrity of the party ballot as severely as the blanket primary does, the state could adopt the completely open, partially open or partially closed primary systems. Under these systems the voter can either change his/her party registration on election day (i.e. partially closed), declare a party on the day of the election (partially open) or not choose until he or she is in the voting booth (i.e. completely open). All of these systems are less vulnerable to the phenomena of swamping and raiding that I discussed earlier.

The last of the alleged benefits of the blanket primary is the greater secrecy it affords voters with respect to their partisan affiliations. Since the voter does not need to declare an affiliation in order to vote in any party's primary, voters who wish to maintain their privacy with respect to partisanship can best do so under the blanket system, or so it is alleged. However, once again, I would point out that the same level of privacy can be maintained in far less burdensome ways. The "completely open" primary requires the voters to choose one party over the others, but the voter does not have to choose until he or she is in the polling booth. Such a system would better preserve the party's autonomy and protect it from strategic intrusions from other parties, but still

afford maximum protection for voters who wish to keep their partisan preferences secret.

PARTY SOVEREIGNTY AND THE PROP 198 VOTE

The passage of Prop 198 raises an interesting political science question: if a majority of the registered Democrats and Republicans who voted in the 1996 primary favored the blanket primary, does this mean that the parties have assented to these rules? I do not presume to give a constitutional interpretation, but I do have thoughts from a political science perspective. Since the seminal work of the scholar V.O. Key, parties are thought to consist of three components: the party in government, the party in the constituency and the party as organization. The party in government refers the formal and informal ties between elected officials sharing the same party label. The party in the constituency is the term of those who register or identify with the party. The party as organization is the official party structure.

Universally, political parties experience tensions between the different components. Elected officials tend to be more responsive to what they perceive as electorally popular. Members of the party organization tend to put greater stock in ideological principle. Aside from the activists and more politically motivated voters, large portions of the electorate may be tangentially connected to the party, and only then because of the need to register or declare a party preference. A compromised synthesis of these perspectives best represents the balanced ideal of party government (Bibby, 1981).

In the past in California, the party as government has heavily regulated the party as organization or official party by statute, dictating party structure and activities through the election code. Recent court decisions have given the parties as organizations more autonomy over their affairs (e.g. SF County v. Eu). Now, with the passage of Proposition 198, we have an attempt by the party as constituency to regulate the party as organization by imposing blanket primary rules. The critical question in political science terms is where should party sovereignty lie? Which sense of the term party should decide the process of assigning the party label to potential candidates?

From a political science perspective, the official party or party as organization is the most appropriate locus of sovereignty. The party as organization is the only setting that brings all three components together at regular intervals for deliberative purposes. Party conventions are forums that convene party officials, registered voters/activists and elected officials in order to talk about matters of policy and party governance. When elected officials make decisions about party governance in their capacity as legislators, they do not have to have the support of either the official party or the party in the electorate. Similarly, when the party as the electorate dictates rule changes by initiative, it does not have to consult or get the approval of the official party of the elected officials. From the perspective of consent, the official party most legitimately represents the synthesis of these components.

Just as the imposition of rules by elected officials was an intrusion in the autonomy of the parties, so the

imposition of rules by voters does not imply the true consent of the parties. Political participation studies identify registration and voting as the least costly forms of political activity (Verba and Nie, 1992). The regulations imposed by the party in the electorate upon the official party weaken the party's ability to express an untainted message (i.e. untained by the viewpoints of other party members) and to field a slate of candidates that can act effectively as a team. The concerns of proponents – such as increasing participation in partisan races – could have been addressed by other open primary systems that better preserved the notion of collective responsibility and party automony. Instead, voters were offered an all-or-nothing chance to open up the system in the peculiar and burdensome fashion of the blanket primary. There is no way of telling whether they fully understood the implications of the system they chose, or whether they would have chosen the blanket primary system over other open systems if given the chance.

The associational rights of parties seem to me to best preserved when the official party decides its own procedures and rules subject to basic prohibitions against nondiscrimination. As long as the party does not exclude individuals on an inappropriate and unconstitutional basis such as race or gender, any system that restricts voters to choices within a slate offered in a primary preserves basic party autonomy. But when the threshold of strategic behavior is lowered considerably, as in the case of the blanket primary, the dangers of swamping and sabotage become considerable. The party's essential function to field teams of candidates with common goals is attacked and its ability to associate effectively for the

purpose of furthering political goals is seriously abridged.

/s/ Bruce E. Cain
Bruce E. Cain

June 4, 1997
Date

You Asked About

The Libertarian Party

As dissatisfaction with politics–as–usual rises at dramatic rates, more and more people across America are classifying themselves as libertarians. The Libertarian Party is the official political organization of these libertarians.

Statement of Principles

We, the members of the Libertarian Party, challenge the cult of the omnipotent state and defend the rights of the individual.

We hold that all individuals have the right to exercise sole dominion over their own lives, and have the right to live in whatever manner they choose, so long as they do not forcibly interfere with the equal rights of others to live in whatever manner they choose.

Governments throughout history have regularly operated on the opposite principle; that the State has the right to dispose of the lives of individuals and the fruits of their labor. Even within the United States, all political parties other than our own grant the government the right to regulate the lives of individuals and seize the fruits of their labor without their consent.

We, on the contrary, deny the right of any government to do these things, and hold that where governments exist, they must not violate the rights of any individual: namely (1) the right to life — accordingly, we support the prohibition of the initiation of physical force against others; (2) the right to liberty of speech and action — accordingly we oppose all attempts by governments to abridge the freedoms of speech and press, as well as government censorship in any form; and (3) the right to property — accordingly, we oppose all government interference with private property, such as confiscation, nationalization, and eminent domain, and support the prohibition of robbery, trespass, fraud, and misrepresentation.

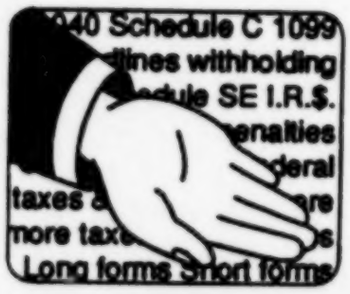
Since governments, when instituted, must not violate individual rights, we oppose all interference by government in areas of voluntary and contractual relations among individuals. People should not be forced to sacrifice their lives and property for the benefit of others. They should be left free by government to deal with one another as free traders; and the resultant economic system, the only one compatible with the protection of individual rights, is the free market.

PLAINTIFFS
EXHIBIT
10

As the name suggests, the goal of the Libertarian Party is liberty. The principles that guide the Party are the same principles that sparked the American Revolution. But why is there a need for a party dedicated to freedom? Don't Americans enjoy more freedom than anyone else?

Americans unquestionably do fare better than people in other countries, but our prosperity is the direct result of freedoms won 200 years ago in the war for independence. Since then, each passing day has seen the gradual erosion of those hard–won freedoms. If Jefferson, Franklin, and Washington were alive today, would they see the free society they fought so hard for, or would they see the repression they struggled to leave behind?

The three cornerstones of the Libertarian Party are 1) free market economics, 2) non–interventionist foreign policy, and 3) the sovereign right of individuals to conduct their lives, non–violently, as they see fit.

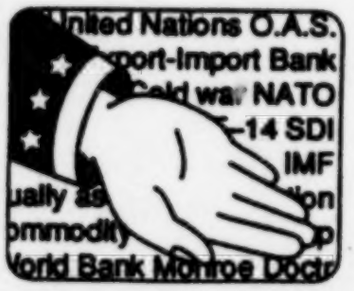


Taxes and Inflation

A key component to freedom is the right to keep the fruits of your labors. Yet today in America, government on all levels seems to be working with but one goal: the elimination of our right to keep what we produce. Unless we secure *all* our economic rights, we cannot fully enjoy personal rights, for personal freedom is impossible under economic repression.

One of the ways the Libertarian Party seeks to restore our freedoms is to eliminate the income tax. Radical? Not really. America did not have an income tax for over 100 years. The Sixteenth Amendment (which gave us the income tax) was passed amid expressions of disbelief tax rates would ever rise higher than 10 percent. You know t(rest.

Libertarians would also eliminate inflation and restore the sound money system authorized by the Constitution. Often referred to as the "hidden" tax, inflation most severely penalizes the thrifty, the poor, and those who have saved for their retirement.



Defense Spending and Foreign Policy

If you are like most Americans, you probably wonder why our government gives your tax dollars to foreign governments who seem to hate us. The sad truth is that the $13 billion in foreign aid we spent last year is a drop in the bucket compared to the $150 billion we spent defending countries such as Japan, Germany, Canada, Korea, and England.

Worse, some of this money also goes to exporting military supplies to one or both sides of civil struggles, and some is spent invasively policing the world with U.S. troops. If you read the news, you know that our foreign policies aren't making us many friends.

The Libertarian Party wants to return to the non–intel ventionist foreign policy of Thomas Jefferson, who urged, "Peace, commerce, and honest friendship with all nations, entangling alliances with none."

Business Welfare

Not all of our tax dollars are wasted abroad, of course. With billions of dollars of your money at its disposal, the government has plenty of money left over to meddle in the domestic economy. That is why you hear about massive farm subsidies (that keep food prices artificially high), costly environment clean–ups (that allow polluters to go unpunished), and savings and loan bail–outs (virtually guaranteeing that con artists can make money robbing banks from the inside).

In each case, the action taken by the government hurts consumers, and they're using your tax dollars to do it!

The Libertarian Party advocates the elimination of all business and farm subsidies, protective tariffs, and price supports, which benefit business interests at the expense of consumers and taxpayers.

War on Poverty

Americans are among the most generous people in the world, voluntarily donating over $40 billion a year to a wide range of worthy charities.

But just as libertarians believe it is wrong for the government to give your tax dollars to businesses, we believe that it is wrong for the government to take money from one person and give it to another, no matter how needy that recipient may appear.

Not only do we find government–sponsored welfare wrong, we know from experience that welfare has an overall negative effect on society. The facts show that America's "war on poverty" is being lost, not because we don't spend enough money but because the principles underlying the compulsory welfare system are themselves based on erroneous concepts of human conduct.

The Libertarian Party believes that voluntary charity and the free market provide the best solutions to supplying the needs of the elderly, the sick, and the poor.

Affordable Housing

Your tax dollars finance government–run community "redevelopment" programs that destroy hundreds of thousands of units of low–income housing. These programs work against the poor to the benefit of special interests such as banks, developers, and oil companies. The Libertarian Party opposes government interference in housing, and we believe the free market will provide affordable housing, if allowed to do so.

More than that, in reducing the size of government, the Libertarian Party will reduce government expenses, eliminating the need for the government to compete with businesses and individuals in borrowing money. This in turn will lower interest rates, making the dream of home ownership available to millions more Americans.

One way or another, big government and big government spending hurt you. The destruction of our liberty, the devaluation of our money, the instability of our economy, the crime in our streets, and many other societal ills are the direct result of runaway government.

America needs a government "of the people, by the people, and for the people." America needs the Libertarian Party.

MEMBERSHIP APPLICATION
Libertarian Party of California
P.O. Box 614
Van Nuys, CA 91408

I hereby certify that I do not believe in nor advocate the initiation of force as a means of achieving political or social goals.

_____
signature date

☐ I am voluntarily setting my dues at:
☐ $25 ☐ $50 ☐ $100 ☐ $250 ☐ Other $ _____
☐ I want to join but I can't afford the above. I am setting my dues at $15
☐ Life Membership ($500 or more)
☐ National Membership (add $15 to the above amounts)
☐ Additional donation $_____
☐ First Class Mail option for *CLNews* ($5)

Name _____
Address ☐ h ☐ w _____
City _____
State _____
ZIP _____
Home phone _____
Work phone _____

Payment:
☐ Check to "Libertarian Party of California"
☐ Please charge my: ☐ VISA ☐ MasterCard
Card # _____
Expiration date _____
Name on card _____
Signature _____
Total Amount Enclosed $ _____

For More Information:
1–(800)–637–1776

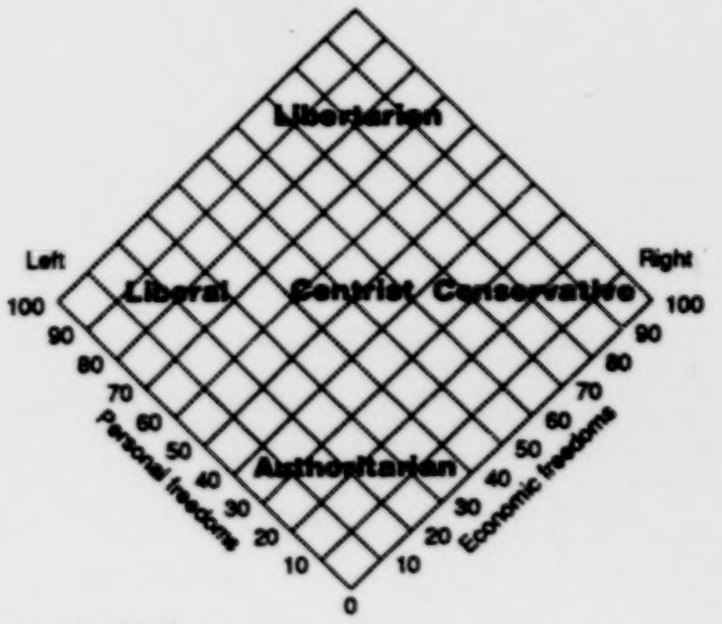
Are you a libertarian?

Answer the following questions, scoring 10 points each time you answer "My decision," 5 points each time you answer "Not Sure," and 0 points each time you answer "Gov't. decision."

Total your scores separately, and plot your personal freedom score against the left scale and your economic freedom score against the right scale. The intersection of your scores reveals your political position.

Personal Freedoms

Whose decision should it be to:	My decision	Not sure	Gov't. decision
Wear a seatbelt or helmet?	☐	☐	☐
Own a gun?	☐	☐	☐
Become a soldier?	☐	☐	☐
Help the needy?	☐	☐	☐
Pay for sex?	☐	☐	☐
Have a baby?	☐	☐	☐
Smoke dope?	☐	☐	☐
Send your child to school?	☐	☐	☐
Swim nude?	☐	☐	☐
Buy a pornographic book or video?	☐	☐	☐
Count checkmarks	___	___	___
Multiply by:	x10	x5	x0
Add multiple totals for your Personal Freedom score:	___	+ ___	= ___



Economic Freedoms

Whose decision should it be to:	My decision	Not sure	Gov't. decision
Work for $2.00 per hour?	☐	☐	☐
Buy a Japanese car?	☐	☐	☐
Play cards for money?	☐	☐	☐
Hire an unlicensed contractor?	☐	☐	☐
Compete with the Post Office?	☐	☐	☐
Hire a minority worker?	☐	☐	☐
Invest in a risky business?	☐	☐	☐
Give to a needy corporation?	☐	☐	☐
Contribute to the defense of a foreign country?	☐	☐	☐
Pay taxes?	☐	☐	☐
Count checkmarks	___	___	___
Multiply by:	x10	x5	x0
Add multiple totals for your Economic Freedom score:	___	+ ___	= ___

If you found yourself in the Libertarian region of the political map, you have scored high on the freedom scale. You have more in common with the Libertarian Party than with the Democratic or Republican Party. Take a stand for freedom: Register Libertarian.

ARE YOU A LIBERTARIAN?

The following two-part quiz is designed to help you determine if you are a libertarian; for each question, check your best answer.

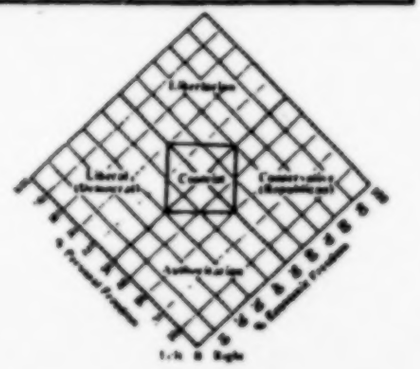
PART ONE: Personal Freedom

Whose decision should it be whether or not you:	My Decision	Not Sure	Gov't's Decision
Wear a seatbelt or helmet?			
Own a gun?			
Serve in the military?			
Help the needy?			
Pay for sex?			
Have an abortion?			
Use drugs?			
Send your child to public school?			
Use unapproved medicine?			
Buy a pornographic book?			
Count checkmarks			
Multiply by	x10	x5	x0
Add multiplied totals for Personal Freedom Score	____ + ____ = ____		

PART TWO: Economic Freedom

Whose decision should it be whether or not you:	My Decision	Not Sure	Gov't's Decision
Work for below minimum wage?			
Buy a foreign car?			
Play cards for money?			
Hire an unlicensed contractor?			
Deliver First Class Mail?			
Hire a minority worker?			
Invest in a risky business?			
Help a bankrupt corporation?			
Give money to a foreign country?			
Provide for your retirement			
Count checkmarks			
Multiply by	x10	x5	x0
Add multiplied totals for Economic Freedom Score	____ + ____ = ____		

Now plot your **Personal Freedom** Score on the left scale and your **Economic Freedom** Score on the right scale. The intersection of your scores reveals your political position.



MEMBERSHIP APPLICATION

I hereby certify that I do not believe in nor advocate the initiation of force as a means of achieving political or social goals.

Signature _____ Date _____

Name _____

Address _____

City _____

State _____ Zip _____

Home Phone _____

Work Phone _____

Occupation* _____

Employer* _____

(* FEC requires our asking)

I choose to set my dues at:

- ❑ $25 (Basic)
- ❑ $50 (Sustaining)
- ❑ $100
- ❑ $500 (Life Membership)

Plus:

- ❑ National LP Membership (add $20 to LPC dues)
- ❑ Additional Donation: $_____
- ❑ First Class Option for LPC Newsletter($5)

Total Enclosed $_____

Payment:

- ❑ Check to: Libertarian Party of California
- ❑ Visa ❑ MasterCard

Card # _____

Exp. Date _____

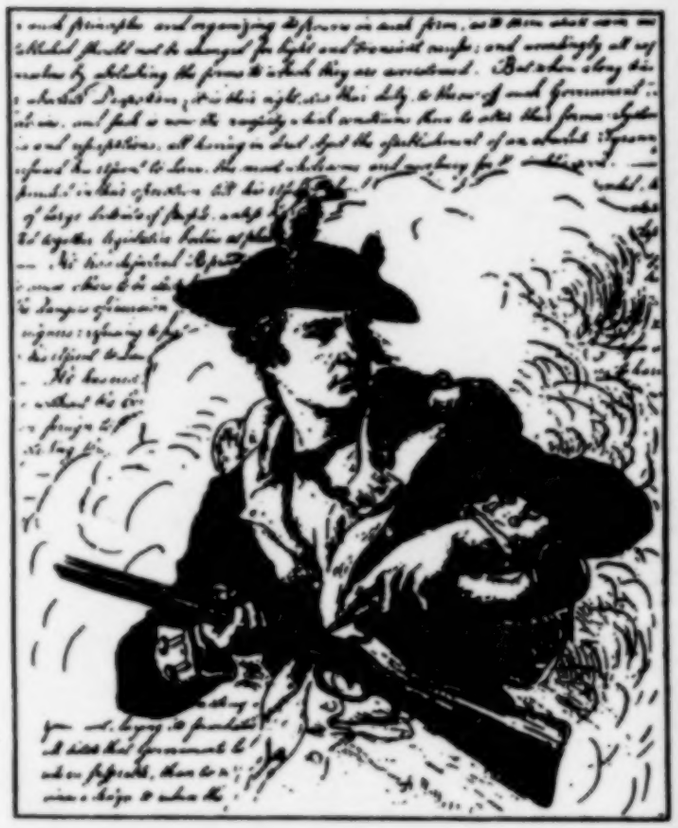
Name on card _____

Signature _____

Send to:

THE LIBERTARIAN PARTY OF CALIFORNIA
289 Greenhouse Mkp. #362
San Leandro CA 94579

THE LIBERTARIAN PARTY



THE ONLY POLITICAL PARTY DEFENDING THE SECOND AMENDMENT

PLAINTIFFS EXHIBIT 12

Prepared by
The Libertarian Party of Los Angeles County

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THE LIBERTARIAN PARTY DEFENDERS OF THE SECOND AMENDMENT

The Libertarian Party is the *only* political party in the United States that resolutely and uncompromisingly defends the Second Amendment to our nation's Constitution: unlike the politicians of the Democratic and Republican parties, the candidates of the Libertarian Party are absolutely firm on "the right of the people to keep and bear arms." No Libertarian in government will ever trade away that constitutional right.

THE DEMOCRATS & REPUBLICANS: TWO SIDES OF THE SAME COIN

It is becoming increasingly difficult to recognize the differences between the Democratic and Republican Parties, and their common position on the Second Amendment is an excellent example: once upon a time, most of the gun-grabbers belonged to the Democratic Party; today, they are just as likely to be found in the Republican Party.

In 1989, Republican President George Bush signed a bill banning the import of semi-automatic rifles into the United States. In 1990, Republican Governor Pete Wilson signed a bill outlawing the sale of most semi-automatic rifles in California. Recently, Ronald Reagan came out in support of the notorious Brady Bill, which even its authors admit would have virtually no effect upon crime. And conservative columnist George Will, "The Voice of the Republican Party", has actually advocated repealing the Second Amendment!

It should be obvious by now that the Republicans are just as willing as the Democrats to throw away your constitutional rights — rights that were bought with the blood of American patriots.

PROTECT YOUR RIGHTS: VOTE LIBERTARIAN

If you believe that "gun control" is immoral because it punishes peaceful citizens for the abuses of criminals, and if you realize that "gun control" has nothing to do with "crime control," then, if you *also* wish to vote for candidates that share your views, you have no alternative but to vote Libertarian. By voting Libertarian, you will take a vital step toward protecting your Second Amendment rights — as well as protecting the other rights guaranteed to you by our Constitution, all of which are under attack in some form or another by the "Demopublicans".

If you want to stop the Democrats and Republicans from revoking your constitutional rights, then register and vote Libertarian!

WHAT IS THE LIBERTARIAN PARTY?

The Libertarian Party is the fastest growing political party in our country. As dissatisfaction with contemporary politics rises at dramatic rates, more-and-more people are leaving the Democratic and Republican Parties and joining the Libertarian Party - the party of freedom.

WHAT DO LIBERTARIANS BELIEVE?

The principles that guide the Libertarian Party are the same that guided the founders of this country: free-market economics, a non-interventionist foreign policy, and the sovereign right of individuals to conduct their lives, non-violently, as they see fit.

Libertarians believe that people should be free to do as they choose, so long as they don't harm others; that individual freedom combined with personal responsibility for one's actions are the basis of a just society.

Libertarians believe that people working in a free-market economy will create innovations that will help feed the hungry, shelter the homeless, and cure the ill.

Libertarians believe that a government which taxes income from those who produce it and gives it to those who do not is immoral.

Libertarians believe that governments should be limited to protecting people from violence, fraud and aggression. Libertarians agree with Thomas Jefferson, who said "...that government governs best that governs least."

For more information about THE LIBERTARIAN PARTY, call 1-800-682-1776

PLAINTIFFS EXHIBIT 20

Peace and Freedom Party

1996 Platform

The Peace and Freedom Party of California, founded in 1967, is committed to democracy, ecology, feminism and socialism. We organize toward a world where cooperation replaces competition; a world where all people are well fed, clothed and housed; where all women and men have equal status; where all individuals may freely endeavor to fulfill their own talents and desires; a world of freedom and peace where every community retains its cultural integrity and lives with all others in harmony. We offer this summary of our shared vision:

Double the minimum wage, and index it to the cost of living.

Guarantee the right of all workers to organize and strike; forbid striker replacement.

Socially useful jobs for all at union pay levels.

Equal pay for equal work and for work of comparable worth.

A 30-hour work week with no cut in weekly pay; longer paid vacations.

Guaranteed dignified income for those who cannot work.

Tax the income and assets of the rich to meet human needs.

International trade agreements must guarantee protection of workers and the environment in all participating countries; abolish NAFTA and GATT.

End homelessness; abolish vagrancy laws; provide decent affordable housing for all.

Social ownership and democratic control of industry, financial institutions and natural resources.

The United States should take the initiative toward global disarmament by eliminating nuclear, chemical and biological weapons.

Withdraw U.S. troops and weapons from other countries. Reallocate the resulting "peace dividend" for social benefit.

PEACE AND FREEDOM PARTY

Abolish the CIA, NSA, AID and other agencies for interference in other countries internal affairs.

Convert from a military to a peace-oriented economy with jobs for displaced workers.

Self-determination for all nations and peoples of the world, including Puerto Rico and all U.S. territories.

Defend and extend liberties guaranteed in the Bill of Rights.

End discrimination based on race, sex, age, sexual orientation, or disability.

Defend affirmative action, guarantee full education and employment rights for all. Oppose Proposition 209.

Provide full free quality public education through university level. Teach the history of workers' struggles and labor's creation of society's wealth and progress.

Abolish the death penalty.

No prison labor for private profit.

Support the right of working people to keep and bear arms.

Democratic elections through proportional representation; full political, social and economic rights for resident non-citizens.

Honor treaties with Native American nations; recognize California's Native American nations. Defend and extend Native American rights and sovereignty.

Free high-quality health care for everyone, including birth control, abortion, pre-natal and childhood health care. No forced sterilizations.

Legalize marijuana, decriminalize drug use, and make substance abuse treatment freely available.

Give special attention to preventing epidemics of deadly diseases such as AIDS. Guarantee the rights of people living with AIDS.

Restore and protect clean air, water, land and ecosystems.

Promote conservation and develop solar and other renewable energy to replace nuclear power and fossils fuels.

Massive development of public transportation available free or at nominal fares.

Outlaw clearcutting and protect remaining old-growth forests.

PEACE and FREEDOM PARTY, P.O. Box 741270, Los Angeles CA 90004 (213) PFP-1998

The Propositions:
It's Do-It-Yourself Time

On November 5, you can vote for the interests of poor and working-class people and against the corporate rich. Voting on the propositions is the way to do that. Here they are, the short rap.

Vote YES November 5 on these Propositions:

YES on Proposition 207
Protect your right to have a lawyer

YES on Proposition 210
Raise the minimum wage to $5.75 per hour

YES on Proposition 211
Stop securities fraud, protect pension plans

YES on Proposition 214
Curb HMO abuse

YES on Proposition 215
Legalize medical use of marijuana

YES on Proposition 216
Improve medical care, protect patients

YES on Proposition 217
Don't let the rich dodge taxes

• • • • • • • • • • • • •

Vote NO November 5 on these Propositions

NO on Proposition 204
Bond issues make the rich richer

NO on Proposition 205
We don't need more jails or more bonds

NO on Proposition 209
Defeat the Lies of the California Civil Wrongs Initiative
defend the gains of the civil rights movement.

NO on Proposition 213
Limits right of poor people to sue for damages

NO on Proposition 218
No tax breaks for the wealthy, no property qualifications for voting

---

Join the Peace and Freedom Party

The Peace and Freedom Party is working to build an independent people's movement that speaks and acts for itself, instead of relying on politicians beholden to corporate interests. We are an independent party committed to socialism, democracy, ecology, feminism and racial equality. We don't claim to have all the answers, nor to be a powerful force as yet, but we know who we are and where we want to go. We are working for a world in which all of us can have full claim on the social resources we all have helped to create, a world which can only come into being on the basis of common ownership amd democratic management of industry and natural resources. Join us to help in this work.

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The "Lesser Evil" — What's so "lesser" about it?

If you are a working class person, or a "minority", or a student, or a feminist, or just someone who cares about social justice, chances are you don't like the Democratic Party ... but you vote for them anyway.

Why? Because you've been told that they're a little bit better than the Republicans. Unfortunately, this is mostly a lie. As the following chart shows, your real choice is not between the Democrats and Republicans.

ISSUE	Democrats	Republicans	Peace & Freedom Party
U. S. Troops out of Middle East, Central America & Caribbean	*Oppose*	*Oppose*	Support
Free quality health care for all	*Oppose*	*Oppose*	Support
Free abortion on demand	*Oppose*	*Oppose*	Support
Decent, affordable housing for all	*Oppose*	*Oppose*	Support
Tax corporations and the wealthy	*Oppose*	*Oppose*	Support
End the boycotts of Cuba and Iraq	*Oppose*	*Oppose*	Support
Abolish the death penalty	*Oppose*	*Oppose*	Support
End corporate rape of the environment	*Oppose*	*Oppose*	Support
Worker control of workplaces	*Oppose*	*Oppose*	Support
Free university education for all	*Oppose*	*Oppose*	Support
Legalize marijuana	*Oppose*	*Oppose*	Support
Recognition of Palestinian state	*Oppose*	*Oppose*	Support
Unilateral nuclear disarmament	*Oppose*	*Oppose*	Support
Community control of police	*Oppose*	*Oppose*	Support
Shorter work week at same pay	*Oppose*	*Oppose*	Support

As you can see, your real choice is between the capitalist, corporate-oriented Republicrats and the socialist, human-oriented Peace & Freedom Party.

But, you say, Peace & Freedom doesn't have a chance. So say the capitalist media, which are controlled by the same elite that controls the dems and the repubs. But who marks *your* ballot: the media ... or you?

Register and Vote Peace & Freedom.

If you don't say that enough is enough, who will? If not now, when?

If you take what they give you ... you deserve what you get!

For more information, call or write:

Peace & Freedom Party

P. O. Box 24764, Oakland, California 94623

(510) 465-9414

PEACE AND FREEDOM PARTY

PLAINTIFFS EXHIBIT 21

the CLINTON record

- President Clinton has spent the post-Cold War PEACE DIVIDEND on maintaining the bloated military budget rather than on rebuilding America's deteriorating infrastructure.
- Upon taking office, Clinton ordered massive BOMBING of population centers in Iraq.
- Clinton embargoed Iran and continues the embargo of Cuba.
- He granted "most favored nation" status to China DESPITE its human rights violations.
- He bolstered the murderous military junta of Myanmar (Burma) with a "drug war" pact.
- Clinton APPLAUDED Turkey's cross-border slaughter of Kurds.
- While Russia was conducting an unpopular war against independent Chechnya, Clinton visited Yeltsin without making any criticism of the unneccesary brutality.
- Clinton feted Gen. Suharto of Indonesia despite military MASSACRES in East Timor.
- He turned his back on human suffering in Guatemala, Rwanda, Somalia and elsewhere.
- Clinton ESCALATED the nuclear stand-off against North Korea.
- Clinton refuses to respond to repeated calls for a global DISARMAMENT conference.
- He was the main proponent of anti-environment, anti-labor NAFTA and GATT treaties.
- He presided over the FBI's barbaric incineration of over 80 members of an isolated Texas church group who had NOT been convicted of any crime, including many children.
- Clinton pulled the rug out from under civil rights justice nominee Lani Guinier.
- Clinton dictated that military gays will be expelled if they even DISCUSS their sexuality.
- He FIRED Surgeon General Jocelyn Elders for doing her job too well.
- Bill and Hillary DERAILED the movement for universal health care in America.
- Clinton's nominations moved the Supreme Court toward even tighter corporate control.

This shameful reminder compiled by Casey Peters, 911 S. New Hampshire Ave., Los Angeles CA 90006.

LABOR DONATED

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

[Caption Omitted In Printing]

DEFENDANT'S
EXHIBIT
A

[LOGO] 198

Elections, Open Primary, Initiative Statute.

Official Title and Summary Prepared by the Attorney General

ELECTIONS. OPEN PRIMARY. INITIATIVE STATUTE.

- Provides that all persons entitled to vote, including those not affiliated with any political party, shall have the right to vote at any election for any candidate regardless of the candidate's political affiliation.
- Provides for a single primary ballot on which, under the appropriate title for each office, the names and party affiliations of all candidates are placed randomly and not grouped by political party.
- Retains separate partisan ballot only for the selection of elective political party committee members by voters of each party.
- Requires Legislature to conform conflicting statutes.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- No direct fiscal impact on state government.
- Unknown, but probably minor, savings to counties statewide.

Analysis by the Legislative Analyst

Background

In general, California has three types of elections: primary, general, and special. Primary elections are held for both partisan offices, where candidates are identified on the ballot with a political party, and nonpartisan offices, where candidates are not identified with a political party.

In order to vote in primary elections for partisan offices, a voter must have identified a political party affiliation when registering to vote and can vote only for candidates of that party. Voters who have not identified a political party affiliation can not vote for candidates running for partisan office in primary elections. These voters, however, can vote for candidates for nonpartisan offices and on propositions.

For every primary election, the elections official in each county is required to prepare a partisan ballot for each political party and a nonpartisan ballot for voters who have not identified a political party affiliation.

Proposal

This measure allows all persons who are entitled to vote in primary elections, including those not affiliated with a political party, to vote for any candidate regardless of the candidate's political party affiliation. Thus, voters in primary elections would be allowed to vote for candidates across political party lines. Furthermore, the initiative provides that county elections officials prepare only

one ballot for all voters. The candidates for an office would be listed randomly on the ballot and not grouped by political party affiliation. The candidate of each political party who receives the most votes for a state elective office becomes the nominee of that party at the next general election.

These provisions do not apply to elections of political party committee members. In these elections, voters would be restricted to voting for candidates of their own political party affiliation.

Fiscal Effect

This measure would have no direct fiscal impact on the state. Counties could realize unknown, but probably minor savings statewide, primarily due to the preparation of fewer ballots.

For the text of Proposition 198 see page 61

Argument in Favor of Proposition 198

How many times have you heard someone say, "I vote for the person, not the party?" Yet, California's existing closed primary election system denies voters that choice.

California faces serious challenges: Our education system, economy, criminal justice system, tax policies, and natural resources are all in trouble.

Instead of facing up to these challenges, politicians from both major parties spend more time fighting with

each other and promoting narrow political agendas than they spend doing their jobs.

GIVE VOTERS A CHOICE.

California's closed primary election system limits voters' choices to candidates within their own party, and excludes 1.5 million independent voters from voting in primary elections at all. It favors the election of party hard-liners, contributes to legislative gridlock, and stacks the deck against more moderate problem-solvers.

The Open Primary will permit every voter to select the best candidate for each office, regardless of party affiliation.

INCREASE VOTER PARTICIPATION.

Voters are increasingly dissatisfied with the choices they face on election day – and participation is declining as a result.

The Open Primary will increase participation by giving voters a real choice and by forcing candidates to focus on issues, not just partisanship. It will also give independent voters – currently excluded in primaries – a chance to participate.

RESTORE HEALTH COMPETITION.

Party registration in most California legislative districts heavily favors one party or the other. In these so-called "safe" districts, the winner of the majority party's primary election is virtually guaranteed victory in the general election, regardless of how extreme the candidate's views.

In these districts, voters in the minority party have no real voice in the selection of their representative.

The Open Primary will encourage healthy competition in every district and force politicians to listen to all voters in their districts, not just those registered in their own party.

OTHER STATES GIVE VOTERS A CHOICE.

California has one of the most "closed" primary systems in the nation. Most other states recognize the increasing independence of voters by giving them a choice on election day.

Washington State and Alaska have open primaries very similar to the one proposed in California by this initiative. Special legislative elections in California are already conducted using a modified version of the Open Primary. The Open Primary system is proven, and it works.

WHO OPPOSES THE OPEN PRIMARY?

Hard-liners in both major political parties oppose the Open Primary because it will weaken their power and the power of special interest groups which support them.

HOW WOULD IT WORK?

Every primary election voter would receive a ballot containing the names of all candidates and their party affiliations. Voters would choose the candidate of their choice for each office, regardless of the candidate's party affiliation. The top vote-getters from each political party would then face each other in the November general election, as they do under the current system.

Non-partisan local offices and party committee offices would be unaffected by the Open Primary.

CALIFORNIA VOTERS DESERVE A CHOICE!
VOTE YES ON PROPOSITION 198.

BECKY MORGAN
Former State Senator

EUGENE C. LEE
Director; Institute of Governmental Studies, University of California, 1967-1988

DAN STANFORD
Chairman, California Fair Political Practices Commission, 1983-1986

Rebuttal to Argument in Favor of Proposition 198

How many times have you heard someone say, "There's not a dime's worth of difference between the parties"? If Proposition 198 passes, that phrase will become reality.

LIMITS VOTER CHOICES

Americans exercise their right of free association by joining the political party that best expresses their own ideas about government. Having made that choice, party members should be allowed to choose their nominees free from outside interference. Allowing members of one party a large voice in choosing another party's nominee – which Proposition 198 would do – is like letting UCLA's football team choose USC's head coach!

CURRENT SYSTEM ENSURES REAL CHOICES

Currently, political parties engage in a healthy debate about which candidate will lead them, giving voters a

real choice between eight different candidates from eight different parties, offering eight different visions.

WHO SUPPORTS PROPOSITION 198?

Proposition 198 is a cynical attempt by a few ambitious politicians who cannot win the support of their own political party. So now they want to change the rules to serve their own self-interest.

UNCONSTITUTIONAL

The United States Supreme Court has already ruled that political parties have the right to determine who votes in their primaries.

Thomas Jefferson advised against "the amalgamation of parties" and applauded distinct political parties with clear philosophical differences as "useful watchmen for the public".

Jefferson has a point. We strongly urge you to *VOTE NO ON PROPOSITION 198.*

BRUCE HERSCHENSOHN
Senior Fellow Claremont Institute

JOHN VAN DE KAMP
Former California Attorney General

ALISON DUNDES RENTELN
Acting Director – USC Unruh Institute of Politics

Argument Against Proposition 198

California primaries have one purpose for registered voters of each political party to vote to select their nominees for the November general election. Democrats can

nominate Democrats; Republicans can nominate Republicans, and that's the way it should remain.

After all, clubs and organizations don't let non-members vote in their elections and neither should California's voters do that in primaries.

Should Democrats be allowed to nominate Republican candidates for office? No! Should Republicans be allowed to nominate Democratic candidates for office? No!

Should Peace and Freedom Party members be allowed to choose the Republican candidate for office? Or should Libertarians choose the Democratic candidate for office? NO!

In primary elections, where parties choose their nominees, only Republicans should be allowed to vote for Republicans, Democrats for Democrats, etc. In the general election, where we choose our leaders, all voters can vote for any candidate, regardless of party.

When Republicans nominated Ronald Reagan in the primary, should Democrats have interfered? NO. Or when Democrats nominated John Kennedy in the primaries, should Republicans have interfered? NO.

Proposition 198 is a cynical attempt by a few self-serving politicians to twist the rules of California's electoral process to advance their own careers.

POLITICIANS AND SPECIAL INTERESTS WILL ABUSE THE PROCESS

Proposition 198 is an invitation to political mischief. This would be a dream come true for the politicians,

political consultants and special interests who will use specialized targeting to manipulate the political system to the benefit of their hand-picked candidates. California elections are already getting out of hand with way too much control by the special interests and political consultants with their massive checkbooks. Proposition 198 would just make the problem worse and take California even further down the wrong path.

PROPOSITION 198 IS UNCONSTITUTIONAL

The United States Supreme Court has already ruled a similar law unconstitutional because political parties should have the right to decide who votes in their own primaries. We don't need another badly drafted initiative clogging up our court system.

Vote no on attempts to undermine democracy. *VOTE NO ON PROPOSITION 198.*

JOHN S. HERRINGTON
Chairman, California Republican Party

BILL PRESS
Chair, California Democratic Party

Rebuttal to Argument Against Proposition 198

The party chairmen don't want you to have a choice unless it matches theirs. If all voters are allowed to participate, they fear they will lose their power, as will the hard-liners and special interest groups who support them.

YOUR *YES* VOTE ON PROPOSITION 198 –

- Makes elected officials more responsive to the voters, not the party chairmen. Unbalanced party registration in most legislative districts, combined with growing numbers of independent voters, mean millions of California voters are denied a choice under the current system.

- Encourages candidates to address issues, not just partisanship.

- Gives control back to voters, not special interest groups which use the existing closed primary system to maintain their control.

- Strengthens the parties by increasing voter participation and by electing candidates from both parties with broader bases of voter support. In states with open primaries, political parties have become stronger and healthier.

SUPREME COURT SUPPORTS BROADER PARTICIPATION

Contrary to claims by the party chairmen, the Supreme Court has strongly supported the right to expand participation in primary elections:

> "We note that the appellant's direst predictions about destruction of the integrity of the election process and decay of responsible party government are not borne out by the experience of the 29 states which have chosen to permit more substantial openness in their primary systems . . . "

> –U.S. Supreme Court
> Tashjian v. Republican Party of Connecticut
> (1986)

Vote YES on Proposition 198 to make political parties and elected officials more responsive to the majority of voters.

LUCY KILLEA
State Senator, 39th District (Independent)

HOUSTON FLOURNOY
State Controller, 1966-1974

DAN STANFORD
Chairman, California Fair Political Practices Commission, 1983-1986

Proposition 198: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure amends and adds sections to the Elections Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. This act shall be known and may be cited as the "Open Primary Act."

SEC. 2. Section 2001 is added to the Elections Code, to read:

2001. All persons entitled to vote, including those not affiliated with any political party, shall have the right to vote, except as otherwise provided by law, at any election in which they are qualified to vote, for any candidate regardless of the candidate's political affiliation.

SEC. 3. Section 2151 of the Elections Code is amended to read:

2151. At the time of registering and of transferring registration, each elector may declare the name of the political party with which he or she intends to affiliate at the ensuing primary election. The name of that political party shall be stated in the affidavit of registration and the index.

The voter registration card shall inform the affiant that any elector may decline to state a political affiliation, ~~but no person shall be entitled to vote the ballot of any political party~~ *and that all properly registered voters may vote for their choice* at any primary election ~~unless he or she has stated the name of the party with which he or she intends to affiliate~~ *for any candidate for each office regardless of political affiliation and without a declaration of political faith or allegiance*. The voter registration card shall include a listing of all qualified political parties.

~~No~~

Notwithstanding any provision to the contrary, no person shall be permitted to vote the ballot ~~of any party or for any delegates to the convention of any part~~ *for any elective political party central or district committee member* other than the party designated in his or her registration, except as provided by Section 2152.

SEC. 4. Section 13102 of the Elections Code is amended to read:

13102. (a) All voting shall be by ballot. There shall be provided, at each polling place, at each election at which public officers are to be voted for, ~~but~~ one form of ballot for all candidates for public office, ~~Except that, for partisan primary elections, one form of ballot shall be provided for each qualified political party as well as one form of nonpartisan ballot~~ *listing all candidates for public office*, in accordance with subdivision (b).

(b) At ~~partisan~~ *such* primary elections, each voter ~~not registered as intending to affiliate with any one of the political parties participating in the election~~ shall be furnished ~~only a nonpartisan~~ *an official primary* ballot. The ~~nonpartisan~~ *official primary* ballot shall contain ~~only~~ the names of all candidates for nonpartisan *and partisan* offices and measures to be voted for at the primary election. ~~Each voter registered as intending to affiliate with a political party participating in the election shall be furnished only a ballot of the political party with which he or she is registered and the nonpartisan ballot, both of which shall be printed together as one ballot in the form prescribed by Section 13207.~~

SEC. 5. Section 13203 of the Elections Code is amended to read:

13203. Across the top of the ballot shall be printed in heavy-faced gothic capital type not smaller than 30-point, the words "OFFICIAL BALLOT." However, if the ballot is no wider than a single column, the words "OFFICIAL BALLOT" may be as small as 24-point. Beneath this heading, in the case of ~~a partisan~~ *an official* primary election,

shall be printed in 18-point boldfaced gothic capital type ~~the official party designation or~~ the words ~~"NONPARTISAN~~ *"OFFICIAL PRIMARY* BALLOT" ~~as applicable~~. Beneath the heading line or lines, there shall be printed, in boldface type as large as the width of the ballot makes possible, the number of the congressional, Senate, and Assembly district, the name of the county in which the ballot is to be voted, and the date of the election.

SEC. 6. Section 13206 of the Elections Code is amended to read:

13206. (a) On the ~~partisan~~ ballot used in a direct primary election, immediately below the instructions to voters, there shall be a box one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the ~~partisan~~ ballot and shall be set directly above these columns. Within the box shall be printed in 24-point boldfaced gothic capital type the words "Partisan Offices."

(b) The same style of box described in subdivision (a) shall also appear over the columns of the nonpartisan part of the ballot and within the box in the same style and point size of type shall be printed "Nonpartisan Offices."

(c) This section shall not apply to ballots for elective political party central or district committee members prepared in accordance with Section 13300.

SEC. 7. Section 13230 of the Elections Code is amended to read:

13230. (a) If the county elections official determines that, due to the number of candidates and measures that must be printed on the ballot, the ballot will be larger

than may be conveniently handled, the county elections official may provide that a ~~nonpartisan~~ ballot *for nonpartisan offices and measures* shall be given to each ~~partisan~~ voter, together with his or her ~~partisan~~ *official primary* ballot, ~~and that the material appearing under the heading "Nonpartisan Offices" on partisan ballots, as well as the heading itself, shall be omitted from the partisan ballots~~.

(b) ~~If the~~ *Notwithstanding Section 13300, the* county elections official ~~so provides;~~ *shall provide that* the procedure prescribed for the handling and canvassing of ballots shall be modified to the extent necessary to permit the use of two ballots by partisan voters. The county elections official may, in this case, order the second ballot to be printed on paper of a different tint, and assign to those ballots numbers higher than those assigned to the ballots ~~containing partisan offices~~ *for nonpartisan offices and measures.*

SEC. 8. Section 13300 of the Elections Code is amended to read:

13300. (a) By at least 29 days before the primary *election,* each county elections official shall prepare ~~separate~~ *identical* sample ballots for each ~~political party and a separate sample nonpartisan ballot, placing~~ *voter, provided however, that in the case of ballots involving elective political party central or district committee members, each county elections official shall prepare separate ballots for the sole use of persons registered with that party, as provided for in Section 2151. On the official identical primary ballots, each county elections official shall place* thereon in each case in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names

and party affiliations of all candidates *organized randomly as provided in Section 13112 and not grouped by political party,* for whom nomination papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary election.

(b) The sample ~~ballot~~ *ballots* shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

(c) ~~One~~ *Except as provided in Section 13230, one* sample *official primary* ballot ~~of the party to which the voter belongs, as evidenced by his or her registration;~~ shall be mailed to each voter entitled to vote at the primary not more than 40 nor less than 10 days before the election. ~~A nonpartisan sample ballot shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary election.~~

SEC. 9. Section 13301 of the Elections Code is amended to read:

13301. (a) At the time the county elections official prepares sample ballots for ~~each political party at~~ the presidential primary, he or she shall also prepare a list *with the name* of candidates for delegates for each political party. The names of the candidates for delegates of any political party shall be arranged upon the list of candidates for delegates of that party in parallel columns under their preference for President. The order of groups on the list shall be alphabetically according to the names of the persons they prefer appear upon the ballot. Each column shall be headed in boldface 10-point, gothic type

as follows: "The following delegates are pledged to ___." (The blank being filled in with the name of that candidate for presidential nominee for whom the members of the group have expressed a preference.) The names of the candidates for delegates shall be printed in eight-point, roman capital type.

(b) Copies of the list of candidates for delegates of each party shall be submitted by the county elections official to the chairman of the county central committee of that party, and the county elections official shall post a copy of each list in a conspicuous place in his or her office.

SEC. 10. Section 13302 of the Elections Code is amended to read:

13302. The county elections official shall forthwith submit the sample *official primary* ballot ~~of each political party~~ to the chairperson of the county central committee of ~~that~~ *each political* party, and shall mail a copy to each candidate for whom nomination papers have been filed in his or her office or whose name has been certified to him or her by the Secretary of State, to the post office address as given in the nomination paper or certification. The county elections official shall post a copy of ~~each~~ *the* sample ballot in a conspicuous place in his or her office.

SEC. 11. (a) No provision of this act may be changed except by a vote of the people.

(b) The Legislature shall amend or delete other provisions of law not encompassed by this act which conflict with the provisions herein in order to bring them into conformity with this act.

SEC. 12. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

[Caption Omitted In Printing]

DEFENDANT'S
EXHIBIT
B

Los Angeles Times Poll
Study #374
March 26, 1996
Exit Poll: The California
Primary Election

The Times Poll interviewed 3,469 voters who cast ballots in the California primary election on March 26. The margin of sampling error for the entire sample is plus or minus 3 percentage points. For subgroups the error margin may vary.

* * *

M. How did you just vote on Prop 198 (Elections/Open Primary)?

	ALL	DEMS	REPS
VOTED FOR	60	60	58
VOTED AGAINST	40	40	42

* * *

Ballot Propositions (Among All Voters)

% OF ALL VOTERS WHO ARE		198 YES	198 NO
	SEX		
49	Male	58	42
51	Female	64	36
	AGE		
10	18-29	60	40
41	30-44	65	35
32	45-64	61	39
17	65 or over	52	48
	RACE/ETHNIC BACKGROUND		
81	White (Non-Hispanic)	60	40
19	Minorities	63	37
	EDUCATION		
20	High School graduate or less	63	37
28	Some college	66	34
26	College graduate	61	39
26	Post-graduate studies	54	46
	POLITICAL IDEOLOGY		
29	Liberal	58	42
32	Middle-of-the-road	68	32
27	Somewhat conservative	58	42
12	Very conservative	51	49
	PARTY SELF-IDENTIFICATION		
42	Democrat	61	39
17	Independent	69	31
41	Republican	57	43

	INCOME		
10	Less than $20,000	63	37
26	$20,000 to under $40,000	61	39
23	$40,000 to under $60,000	64	36
13	$60,000 to under $75,000	58	42
28	$75,000 or more	58	42
	RELIGION		
49	Protestant	61	39
24	Catholic	62	38
12	Other religions	62	38
15	Don't practice any religion	56	44

How the Poll Was Conducted

The Los Angeles Times Poll interviewed 3,469 voters who cast ballots in the California primary election as they exited 60 polling places across the state. The sample included 1,816 voters in the Republican Party primary and 1,564 voters in the Democratic Party primary. Precincts were chosen based on the pattern of turnout in past primary elections.

The survey was a self-administered, confidential questionnaire. The margin of sampling error is plus or minus 3 percentage points for all primary voters, for Republican primary voters, and for Democratic primary voters. For some subgroups the error margin may be somewhat higher. Fieldwork for this survey was conducted by Davis Research.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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DEFENDANT'S
EXHIBIT
E

The Consequences of Primary Election Laws in the American States

Expert Report

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June 3, 1997

I. Overview of the Project

In March of 1996, California voters passed Proposition 198, the Open Primary Law. Proposition 198 requires that California replace its current system of closed primaries for nominating candidates for state and federal office with an open or "blanket" primary system. This entails moving from a system in which participation in primary elections is limited to registered party members, to a system in which voters participate in the nominating primaries without regard to their party registration. Proponents of Proposition 198 argued that allowing registered voters to participate in whichever primary they choose, regardless of their party registration, would result in more competitive elections, increased voter participation, and more responsive elected representatives

(Secretary of State, 1996). Opponents argued that opening candidate nominations to nonpartisans and members of the other parties would result in raiding of the party's nomination process and a weakening of the parties (Secretary of State, 1996).

While we will only know the ultimate consequences of Proposition 198 after blanket primaries are put into place and several elections are held under the new system, it is instructive to analyze the experience other states have had with similar laws. Electoral laws, like other political institutions, create incentives for candidates, voters, and parties to engage in predictable patterns of behavior. These patterns of behavior result in predictable electoral outcomes. Certainly, there are also numerous other features of each state's unique political environment that also shape the electoral outcomes in that state. It is, however, reasonable to expect that there will be broad similarities between the electoral outcomes that result from states that have similar electoral laws and institutions.

This report summarizes research that analyzes the relationship between the primary system used in each of the American states and some of the outcomes produced by the electoral system. I find that in states that use blanket primaries, the congressional elections were more competitive by several measures, including the winning candidate's average vote share, number of uncontested races, partisan balance, average number of candidates in primary races (for Democrats only), and general election turnout. There were fewer minor party candidates in blanket primaries, and a far lower share of the general election vote went to minor party candidates, indicating

that the major parties in blanket primary systems are more permeable and are better able to incorporate diverse interests into their ranks. A higher percentage of the Members of Congress elected from blanket primary states are women, although a lower percentage of the Members of Congress elected from blanket primary states are members of racial or ethnic minority groups. The policy positions of Members of Congress elected from blanket primary states are also more moderate, both in an absolute sense and relative to the other party, and so are more reflective of the preferences of the mass of voters at the center of the ideological spectrum. Analysis of recent state legislative elections in California and Washington reveals many of the same patterns as well.

On the basis of these experiences in states with different primary election laws, I conclude that when the blanket primary is put into place in California, electoral outcomes in the state are likely to become more like those in states that already have blanket primaries. In other words, we can expect blanket primaries to make California elections more competitive, the parties more permeable, and the elected representatives more responsive to voters in the state. Since the data are limited in some ways that are discussed at length below, the point of this report is not to suggest that California elections will change in each and every one of the ways suggested by the analyses. Rather, the point is to construct a broad picture of some of the numerous electoral outcomes common among states with particular electoral laws. On the basis of the overall experience from other states, it is reasonable to conclude that on many of the dimensions illustrated in the report, election outcomes in California will become

more similar to those in states with open or blanket primaries under California's new primary election law. Any of these changes would improve the health and competitiveness of the two party system in California.

II. Description of the Data

The project analyzes data on primary system type and election outcomes drawn from numerous sources. This section summarizes the main sources of data.

A. Primary System Type

The US Constitution empowers individual states to determine the laws by which they conduct elections. To nominate candidates for congressional, state legislative, and state executive offices, all states use some form of primary elections.[1] These election laws vary in terms of restrictions on who can participate in the nomination process. The following are the main types of primary election laws currently used in the American states.

---

[1] Note that a state's laws regulating the nomination of congressional, state legislative, and state executive candidates often differs from its laws regulating presidential nominations. This research focuses strictly on the former, however, we would expect many of the patterns (i.e. competitiveness) to hold for presidential elections as well. Also, a state's laws for nominating minor party candidates often differ from its laws for nominating major party candidates.

1) Closed Primaries

Participation is limited to individuals who register as members of the parties a specified period in advance of the election. This system is currently used in sixteen states, including California prior to the implementation of Proposition 198.

2) Semi-Closed Primaries

Participation is limited to registered members of the parties and new voters and/or independents. Participation by members of other parties is prohibited. This system is currently used in eight states.

3) Open Primaries

Participation is open to registered voters, regardless of partisan affiliation. Members of any party, new voters, and independents select the primary in which they will participate on election day. However, an individual is restricted to participating in the primary of only one party at each election. This system is currently used in twenty-three states.

4) Blanket Primaries

Participation is open to registered voters, regardless of partisan affiliation. Voters choose between the entire set of candidates of each office, regardless of party, and may vote for candidates from different parties for each office. This is the system proposed in Proposition 198 and is currently used in two states (WA and AK).

5) Nonpartisan Primaries

Participation is open to registered voters, regardless of partisan affiliation. Voters select between all of the candidates for a given office, regardless of the candidates' party affiliation. The top two vote receivers, regardless of party, meet in a subsequent (runoff or general) election. This system is currently used in one state (LA).

In addition, some states also use a runoff procedure if no candidate receives a majority of the primary vote, in which the two candidates that receive the most votes in the primary meet in a runoff election.

Table 0 reports the type of primary election laws used to nominate congressional, state legislative, and state executive major party candidates in the American states as of 1990. Since 1990, only California has changed its nomination procedures.

Table 0. Primary Election Systems in the American States, 1990

State	*Primary System*	*State*	*Primary System*
AL	Open+Runoff	MT	Open
AK	Blanket	NE	Closed
AZ	Closed	NV	Closed
AR	Open+Runoff	NH	Closed
CA	Closed	NJ	Semi-Independ
CO	Closed	NM	Closed
CT	Semi-New	NY	Closed
DE	Closed	NC	Closed+Runoff
FL	Closed+Runoff	ND	Open
GA	Open+Runoff	OH	Open
HI	Open	OK	Semi-Both+Runoff

ID	Open	OR	Semi-New
IL	Open	PA	Closed
IN	Open	RI	Semi-Independ
IA	Open	SC	Open+Runoff
KS	Closed	SD	Closed
KY	Closed	TN	Open
LA	Nonpartison+Runoff	TX	Open+Runoff
ME	Semi-Independ	UT	Open
MD	Semi-New	VT	Open
MA	Semi-Independ	VA	Open
MI	Open	WA	Blanket
MN	Open	WV	Closed
MS	Open+Runoff	WI	Open
MO	Open	WY	Open

Source: Bott, 1990.

In the analyses that follow, I compare election results in states with closed primaries (no runoff) to those in states with open primaries (no runoff) and blanket primaries. While semi-closed primaries, nonpartisan primaries, and open and closed primaries with runoffs may also be interesting from an academic perspective, the ways those institutions shape the behavior of voters, parties, and other political actors are complex and are not well understood. More importantly, the consequences of those other election laws are not directly relevant to the question at hand: what will be the consequences of moving from closed primaries to blanket primaries in California.

B. Election Outcomes

The data on primary election systems described above allows me to group states according to similarities in their election laws. The data on election outcomes

described below allows me to assess the consequences of those election laws.

For reasons of data availability, the bulk of this report considers the outcomes of US congressional elections. In tables 1 through 9, I consider various aspects of the 1996 congressional elections, including general election vote margin of the winning candidates, percent of uncontested races, percent of Democrats and Republicans elected, general election turnout, number of major party candidates in the primaries, number of minor party candidates, vote share to minor party candidates, percent of races with at least one minor party candidate, and number of women and minorities elected. All of this information is available from the official election returns.[2]

Analyzing the elections returns from the 1996 congressional elections provides much information about the consequences of different primary election laws. Since the data are from just a single election, however, they may be subject to peculiarities of that one election and so the inferences that can be drawn about the likely consequences of Proposition 198 are more limited than if we were to analyze the outcomes of several elections. To offset this limitation, I also analyze comparable data on

[2] Please note that because of time constraints, I used the uncorrected returns as reported on election night by CBS, since they were available electronically (CBS 1997). These returns differ slightly from the corrected official returns. I did, however, conduct a detailed comparison of the official and unofficial returns. Based on that comparison, I verified that the unofficial returns were, in each case, within several hundred votes of the official returns. In addition, in each case, the unofficial returns indicated the correct winner.

state legislative elections in California and Washington for 1996. To the extent that election laws systematically shape electoral outcomes, we ought to observe similar patterns at the level of state legislative elections as well. For the most part, differences in the patterns observed in the state legislative election returns for California and Washington mirror differences in the congressional election returns for closed and blanket primary systems. There are some subtle differences between the state and congressional election returns, however, that appear to result from differences in other aspects of the electoral process in the two states, especially the existence of term limitations in California. I obtained these data from the Secretary of State Web Pages in each state (CA Secretary of State 1997, WA Secretary of State 1997).

I also analyze the policy positions of US Representatives elected between 1982 and 1990. Policy positions are measured as the representative's ADA score (CQ 1983-92). Each year, the ADA (Americans for Democratic Action) analyzes members' roll call votes and on the basis of these votes, assigns a "liberalism" score that ranges from 0 (most conservative) to 100 (most liberal). ADA scores are widely accepted within political science as a reliable measure of the liberal/conservative position of the member. Unfortunately, however, comparable data are not available for state legislators.

III. US Congressional Elections

A. Competitiveness

The first set of analyses consider the competitiveness of US Congressional elections that use blanket primaries,

open primaries without runoffs, and closed primaries. In the tables below, I also indicate the value for California separately for each of the measures of interest.

Table 1 below shows that *the average vote margin of the winning congressional candidate is smaller in blanket primary states than in closed primary states,* both in terms of the number of votes received and as a percentage of the total votes cast. Note that the ratio of the winning candidate's vote margin to total votes is greatest in California, indicating that congressional races in California were the least competitive by this measure.

Table 1. Winning Congressional Candidate's Average Vote Margin, 1996

Primary System	*Vote Margin*	*VM/TotalVote*
Blanket	35,240	.1797
Open	60,889	.2824
Closed	52,343	.3076
California	48,549	.3124

• • •

A second measure of competitiveness is how many of the races were uncontested. Table 2 below reports the percent of uncontested races in blanket primary states, open primary states, closed primary states, and California separately. We see that while the percent of uncontested races is small in all types of primary systems, *the greatest share of uncontested races are in closed primary states and the smallest share are in blanket primary states.* In fact, in 1996, there were no uncontested general election races in the blanket primary states. Less than 1 percent of the races in

open primary states were uncontested, while over 2% of the races in closed primary states were uncontested. In California, none of the fifty-two races were uncontested. This absence of uncontested races is contrary to the recent historical trend in California, however, and is likely due to the existence of term limitations on state legislators.[3] In previous years, there were numerous uncontested races in California.

Table 2. Percent of Uncontested Races, US Congressional Elections, 1996

Primary System	*% Uncontested Races*	*Number of Races*
Blanket	0	10
Open	0.79	126
Closed	2.13	141
California	0	52

• • •

A third measure of competitiveness is the extent that candidates from the two major parties hold an advantage under particular primary systems. Table 3 below shows that *blanket and open primary states produced nearly identical proportions of Democrats and Republicans, while closed primary states showed more partisan bias,* producing six percent more Republicans than Democrats. In California, the partisan bias was in the opposite direction, with seven

[3] Although California's term limitations do not apply directly to Members of Congress, they may indirectly affect the competitiveness of congressional races by producing a greater number of qualified candidates who are term limited out of the state Assembly or Senate.

percent more congressional Democrats elected than congressional Republicans.

Table 3. Percent Democrats and Republicans, US Congress, 1996

Primary System	*% Democrats*	*% Republicans*
Blanket	50.00	50.00
Open	49.21	51.00
Closed	46.81	53.19
California	53.85	46.15

• • •

A fourth measure of competitiveness is the degree of voter turnout in the general election. In 1996, *turnout was the highest in the blanket primary states, lower in the open primary states, and the lowest in the closed primary states.* Turnout was nearly twelve percentage points lower in California than in the blanket primary states.[4] These figures are reported in table 4 below.

Table 4. General Election Turnout, Percent of Voting Age Population, 1996

Primary System	*Turnout-General*
Blanket	55.81
Open	53.97
Closed	49.51
California	43.90

[4] Of course, many other factors besides primary system drive election outcomes; these may be especially important with respect to turnout. Still, the results presented here are suggestive of a general increase in competitiveness in blanket and open primaries.

* * *

A fifth and final measure of competitiveness is the number of candidates that participate in the primaries. Table 5 reports the number of Democratic and Republican party candidates in the 1996 primaries. Table 5 shows that *the average number of Democratic primary candidates per seat was highest in the blanket primary states, lower in the open primary states, and lowest in the closed primary states*. There were slightly more Democratic primary candidates per seat in California than the closed primary system average, although the number per seat in California was still much lower than in the open or blanket primary states. *For Republicans, however, competition as measured by the average number of candidates per seat was the lowest in the blanket primary states*. This finding is contrary to expectations and is likely due in part to the indirect effects of state legislative term limits on the availability of congressional candidates in California.

Table 5. Number of Major Party Candidates in Congressional Primaries, 1996, and Average Number of Major Party Primary Candidates per Seat

Primary System	*Number Democrats*	*Average Dem/Seat*	*Number Republicans*	*Average Rep/Seat*
Blanket	27	2.70	16	1.60
Open	246	1.95	251	1.99
Closed	200	1.42	250	1.77
California	86	1.65	100	1.92

* * *

To summarize, tables 1 through 5 indicate that **elections in blanket primary states are more competitive than elections in closed primary states,** and especially in California, as measured by the winning candidate's vote margin, percent of uncontested races, partisan balance, general election turnout, and number of Democratic primary election candidates.

B. Permeability

The second set of analyses consider the permeability of the major political parties in states that use blanket, open, and closed primaries. I assess permeability by examining the number and viability of minor party candidates. When the parties are very permeable, diverse interests are easily incorporated into them; when the parties are less permeable, diverse interests must find other mechanisms for representation such as minor parties. Thus, an indicator of permeability is the number of candidates that run as minor party candidates and the share of the vote they receive.

Table 6 reports the average number of minor party candidates in US congressional elections in 1996. In this and all subsequent analyses, unless indicated otherwise, I summarize the information from all minor parties and minor party candidates into a single measure. In many cases, however, the information on minor parties includes data from several candidates from different minor parties. Table 6 shows that *the average number of minor party candidates is much lower in blanket primary states than in open or closed primary states*. Open and closed primary states average 1.36 and 1.31 minor party candidates per general

election race, respectively, while blanket primary states average only 0.6 minor party candidates per race. Congressional elections in California average more than 2 minor party candidates per race.

Table 6. Average Number of Minor Party General Election Candidates, US Congressional Elections, 1996

Primary System	*Average Number MPC*	*Number of Races*
Blanket	.6000	10
Open	1.3571	126
Closed	1.3050	141
California	2.0385	52

* * *

Table 7 provides a second measure of the permeability of congressional elections: the average percent of the vote to minor party candidates. Consistent with the results reported for table 7 above, *minor party candidates in blanket primary states received a lower percentage of the total votes cast*, while minor party candidates in California received, on average, over 5 percent of the total votes cast.

Table 7. Average Percent of Vote to Minor Party Candidates, US Congressional Elections, 1996

Primary System	*Average Vote %*	*Number of Races*
Blanket	1.37	10
Open	3.23	126
Closed	3.22	141
California	5.07	52

* * *

A third measure of permeability is the percent of races with at least one minor party candidate. Table 8 reports the percent of 1996 US congressional races with at least one minor party candidate. By this measure as well, *parties in blanket primary states are the most permeable in the sense of having the fewest races with one or more minor party candidates.* While only 40% of the races in blanket primary states had at least one minor party candidate, fully 96% of those in California had at least one minor party candidate.

Table 8. Percent of Races With At Least One Minor Party Candidate, US Congressional Elections, 1996

Primary System	*% of Races*	*Number of Races*
Blanket	40.00	10
Open	79.37	126
Closed	70.92	141
California	96.15	52

* * *

To summarize, the data from 1996 US congressional elections illustrates that **in blanket primary states, fewer minor party candidates run and those that do run receive a lower the share of the vote than in open or closed primary states.**

C. Representation

The third set of analyses consider the representativeness of the Members of Congress elected under blanket, open, and closed primaries. By representativeness, I mean the

extent to which Members of Congress reflect both the demographic and ideological composition of their constituencies. One measure of representativeness is therefore the percent of women and minorities elected in states with each type of primary system. The closer the percent of candidates to their proportion in the population, the more reflective are elected representatives of their constituents.[5]

As the top section of table 9 shows, *the percent of women elected in blanket primary states is greater than the percent elected in closed primary states.* 20% of the Members of Congress elected in 1996 from blanket primary states were women, compared to only 9.52% in open primary states and 13.48% in closed primary states. Women were elected at a higher rate in California than in the other closed primary states, although the percentage, 19.23%, is still lower in California than in the blanket primary states of Washington and Alaska.

Table 9. Percent of Women and Minorities, US Congress, 1996

Primary System	*Women*
Blanket	20.00
Open	9.52
Closed	13.48
California	19.23

[5] This is but one measure of representation. Critics claim that what is important is not descriptive representation, i.e. reflecting demographic characteristics within the electorate, but rather substantive representation, i.e. reflecting the electorate's policy positions (see Swain 1993). I consider this second form of representation below.

	Nonwhites
Blanket	0
Open	9.52
Closed	13.48
California	19.23

* * *

Women fare better in blanket primary states than either open or closed primary states, indicating that the electoral system in blanket primary states allows for a closer representation of the state's population. However, the case is more complex for members of racial and ethnic minority groups.[6] In the racially diverse state of California, where nonwhites accounted for 44% of the adult population in 1990 and close to 50% by 1996, 19.23% of the state's congressional delegation was nonwhite. In the more racially homogenous states of Washington and Alaska, where nonwhites accounted for 13% and 27% of the adult population, respectively, no nonwhites were elected. Compared to the share of nonwhites in the population, however, it is unclear whether nonwhites are better represented in California or in the blanket primary states. In fact, in all primary systems – blanket, open, and closed – nonwhites continue to be greatly under-represented. Thus, while *fewer nonwhites were elected in blanket primary states than in open or closed primary states,* it is critical to

[6] For the purposes of this analysis, I use US Census categorizations and take nonwhites to include Blacks, Asians, Pacific Islanders, American Indians, Eskimos, Aleuts, ad Hispanics. Data on the gender and race of Members of Congress are obtained from member biographies on the US Congress Web pages (Congress 1997).

note that differences in state population characteristics may be largely responsible for these differences in the electoral success of nonwhite congressional candidates.

* * *

In addition to demographic characteristics, a second measure of representativeness is the relationship between a legislator's policy positions and those of his or her constituents. Decades of survey research in political science show that the great majority of American citizens place themselves at or near the center of the ideological spectrum. The closer a representative's policy position is to the ideological center, then, the more reflective he or she is to the policy position of the majority of voters.[7]

Table 10 reports the mean ADA scores of US Representatives between 1982 and 1990, broken down by party. As discussed above, ADA scores are a measure of the representative's ideology as indicated by his or her voting record. Higher ADA scores indicate a more liberal voting record, with 100 indicating the most liberal, while lower ADA scores indicate a more conservative voting record, with 0 indicating the most conservative.

I expect that if opening the nomination process leads to more moderate representatives, as the proponents suggest, Republicans elected under open and blanket primaries will have higher (more liberal) ADA scores than

[7] By moving towards the center, however, the representative moves further away from the preferences of voters located at one extreme. The point I am making here is an empirical point; whether moving towards the center is good or bad is a normative point.

Republicans elected under closed primaries, while Democrats elected under open and blanket primaries will have lower (more conservative) ADA scores than Democrats elected under closed primaries.[8] I find some evidence for this expected pattern. For Republicans, the mean ADA score for representatives elected under closed primaries is substantially lower (more conservative) than the mean ADA score for Republicans elected under blanket primaries. In other words, the more closed the primary system, the further the representative's voting record from the ideological center, as expected. Republicans from California are extremely conservative, with an average ADA score of only 8.53. For Democrats, the picture is somewhat more mixed. The mean ADA score for Democrats elected under closed primaries is greater (more liberal) than the mean ADA score for Democrats elected under open primaries, as expected. Democrats from California are extremely liberal, with an average ADA score of 91.13. However, the mean ADA score for Democrats elected under blanket primaries is more extreme (liberal) than the mean score for Democrats elected from more closed primary systems, contrary to the predictions of proponents of blanket primaries. Thus, *Republicans from blanket primary states are the closest to the mass of voters at the center of the ideological spectrum. Democrats from open primary states are closer to the center than Democrats from closed primary states, but Democrats from blanket primary states are in fact more liberal than their counterparts elected in closed primary states.*

[8] This logic is developed in great detail in Gerber and Morton 1997.

Table 10. Mean ADA Scores of US Representatives, Democrats and Republicans, 1982-1990

Primary System	*Democrats*	*Republicans*
Blanket	86.89	31.19
Open	79.39	15.11
Closed	83.72	16.88
California	91.13	8.53

* * *

Some of the deviation from the expected patterns in table 10 may be due to the fact that the data fail to account for differences across states in voter preferences. Certainly voters in Utah have, on average, different policy preferences than voters in Massachusetts. To the extent that these differences in voter preferences are correlated with the primary election system used in each state, differences in the positions of representatives elected under the different systems may simply reflect responses to different types of voters rather than the effects of primary election laws. Specifically, if voters in Washington and Alaska are, on average, more liberal than voters in California and the other closed primary states, then the liberal ADA scores of blanket primary system Democratic Members of Congress may result from their responsiveness to a more liberal constituency.

Table 11 controls for differences in voter preferences across states by computing the difference between the mean score of Democratic and Republican representatives elected from a given state. Table 11 shows that *the ideological positions of Democrats and Republicans elected from blanket primary states are the most convergent, while the positions*

of Democrats and Republicans elected from closed primary states are more divergent. The difference between the mean Democratic ADA score and the mean Republican ADA score within the California congressional delegation is enormous, separating Democrats and Republicans by 82.60 points.

Table 11. Difference between Mean Democratic ADA Score and Mean Republican ADA Score, State Congressional Delegations, 1982-1990

Primary System	*MeanDemADA-MeanRepADA*
Blanket	53.14
Open	61.95
Closed	60.89
California	82.60

* * *

To summarize, there is some evidence that the policy positions of Members of Congress elected in blanket primary states are closer to those of the majority of voters at the center of the ideological spectrum. When we control for differences in voter preferences across states, we see that **the policy positions of Democrats and Republicans from blanket primary states are much more convergent than the positions of Democrats and Republicans elected from closed primary states.**

IV. State Legislative Elections

Many of the same patterns that are evident in US Congressional elections emerge when we analyze state legislative elections as well. In the analyses below, I compare

the outcomes of the 1996 state legislative races in Washington, which uses blanket primaries, and California, which at the time used closed primaries.[9]

A. Permeability

The results regarding permeability are quite consistent with the results from US congressional elections. Table 12 below compares the average number of minor party candidates in Washington and California state legislative races. As with congressional races, there are, on average, fewer minor party candidates in the blanket primary system – Washington – and more minor party candidates in the closed primary system – California.

Table 12. Average Number of Minor Party Candidates, State Legislative Elections, WA and CA, 1996

State	*Average Number MPC*	*Number of Races*
Washington	0.07	123
California	0.81	100

[9] The analysis of state legislative elections is limited to measures of permeability and representativeness. In preliminary analysis, I compared the competitiveness of state legislative elections in California and Washington. Subsequently, however, I learned that Washington's term limitations had not yet taken effect in 1996, rendering the comparison invalid. The analysis of representativeness is limited to comparisons of women and nonwhites elected in California and Washington, since ADA scores are not available for state legislators. I exclude analyses of Alaska state legislative elections since the extremely small size of Alaska's state legislative districts are bound to make measures like competitiveness incomparable across the states.

* * *

The subsequent results regarding permeability of the parties as reflected in state legislative elections are also consistent with the results regarding permeability as reflected in congressional elections. We see in table 13 that minor party candidates receive a greater share of the vote in California's closed primary system, and as illustrated in table 14, are present in a much higher percentage of state legislative races.

Table 13. Average Percent of Vote to Minor Party Candidates, State Legislative Elections, WA and CA, 1996

State	*Average Vote %*	*Number of Races*
Washington	0.41	123
California	3.67	100

Table 14. Percent of Races With At Least One Minor Party Candidate, State Legislative Elections, WA and CA, 1996

State	*% of Races*	*Number of Races*
Washington	7.32	123
California	59.00	100

B. Representation

The results regarding the election of women and minorities to state legislative office mirror those for congressional elections as well. As with congressional elections, *the percent of women elected to state legislative office is larger in Washington, while the percent of nonwhites elected to state legislative office is larger in California.* 36.59% of the state legislators elected in Washington in 1996 were women,

while 25% of those elected in California in 1996 were women. Twenty percent of the state legislators elected in California in 1996 were nonwhite, while 3.25% of those elected in Washington in 1996 were nonwhite. Fourteen of the twenty minorities elected in California were Hispanic, reflecting the large Hispanic population. Again, the differences in the number of nonwhites elected in the two states reflect huge demographic differences in the underlying state populations. Still, in both states, all racial and ethnic minority groups were underrepresented in the set of state legislators elected in 1996.

Table 15. Percent of Women and Minorities, State Legislatures, WA and CA, 1996

State	*Women*
Washington	36.59
California	25.00
	Nonwhites
Washington	3.25
California	20.00

V. Summary and Conclusion

Analysis of recent congressional and state legislative elections reveals important and systematic differences between the electoral outcomes resulting from states that use different primary election systems to nominate candidates for office. The following patterns emerge: 1) elections are more competitive in blanket primary states; 2)

the parties are more permeable; and 3) the elected officials are more reflective of the majority of voter preferences in their states. On the basis of the experience from other states, it is reasonable to conclude that election outcomes in California will become more similar to those in states with open or blanket primaries under California's new primary election law. In my opinion, any or all of those changes would improve the health of California's two party electoral system.

/s/ Elizabeth R. Gerber 6/3/97
Elisabeth R. Gerber

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

[Caption Omitted In Printing]

DEFENDANT'S EXHIBIT G

STATEMENT OF: **Dr. David J. Olson**
Professor of Political Science
University of Washington – Seattle
Expert Witness on Washington State's
"Blanket Primary"

RE: **California Democratic Party, et al. v. Bill Jones, Secretary of State of California**

Until passage by public vote of Proposition 198 in California in 1996, only two states in the U.S. had adopted the "blanket primary" for conducting primary elections in the U.S. There are thirteen Western States, six of which employ the closed primary, while seven utilize the open or blanket primary (Benedict and Hrebenar, 1991, 107). Only Washington state (beginning in 1936) and Alaska (beginning in 1960) used the blanket primary prior to its adoption in 1996 by citizen initiative in California. The present statement addresses the uses and consequences of the blanket primary in the state with the longest experience with this unique form of the direct primary election.

Direct primary elections first appeared in the U.S. shortly after the turn of the current Century as an alternative method for political parties to select their nominees for the general election, replacing the more restrictive methods of the party convention and the party caucus.

The drive for adoption of the direct party was led by the Progressive Movement, which found fertile soil for its ideas among Western states (Hofstadter, 1955). The direct primary varies in form between the closed primary, on one hand, where voters choose party nominees from among candidates within the party within which the voter is registered, and the blanket primary, on the other hand, where voters do not have to declare a preference for one or another political party, and where they are free to choose nominees for each office among candidates of all parties. The open primary exhibits elements of both the closed and blanket primaries, where voters can cast votes in either party, but they cannot split their ballots between the parties in a given primary.

Opponents of the blanket primary argue that it intrudes on the associational rights of a party organization to choose candidates who will represent the platform stands of the party, and it allows candidates to run in the general election under the name of the party without being beholden to the party or its views. Blanket primary supporters respond that this nomination method removes the selection of nominees from the hands of a closed circle of party stalwarts, maximizes voters' freedom of choice over candidates, encourages voter turnout, and ensures that elected officials are representative of the people to be governed by forcing the parties to have a broad, cross-section of support from voters.

At the base of differences between opponents and supporters of the blanket primary lie two competing philosophies of democracy in the U.S. Advocates of strong parties see democracy best served by elected officials who adhere closely to party principles and platforms and

who abide by strong party discipline while holding office. Those less concerned with state guarantees of strong parties view democracy as best served by widely dispersed and active involvement among eligible voters in the selection of nominees who stand for election in general elections. In the end this is, of course, a question of political choice between competing philosophies about how the goal of genuine democratic self government is best attained by the alternative methods available for its realization.

In what follows, I present empirical evidence drawn from Washington state's six-decade experience with the blanket primary to address a series of issues that have been raised about the uses and consequences of this unique form of the direct primary. The discussion is informed by the findings of research conducted by political scientists, my own direct scholarly research results, and a quarter century of close observation and involvement in state politics in Washington. The format of presentation is to raise a series of six questions, and to provide answers to them.

QUESTION 1: Is There Evidence In Washington State of Cross-Over Voting, Or Raiding, or Phoney Candidates Due To the State's Blanket Primary System?

This three-part question is prompted, naturally enough, because the blanket primary allows voters to depart their normal party voting patterns to enter the opposition party column in primary elections supposedly to:

a.) "cross-over" and adversely influence the outcome of the opposition party's selection of its nominee;

b.) "raid" the opposition party's primary by strategically voting for the weakest or most vulnerable candidate in order to enhance one's own party's fortunes in the general election;

c.) support "phony" candidates in the opposition party's column whose names are the same as, or similar to, the leading opposition party candidate, or otherwise confuse the opposition party's selection of its nominee.

To address the first of these questions, cross-over voting does occur under the blanket primary system in Washington state. Because primary voters can choose for whom to vote for each office among candidates of all parties, ticket splitting is possible and it does occur in Washington state, whereas it is prohibited under either closed or open primary systems elsewhere. The blanket primary effectively gives voters the same choice structure in primary elections as they are afforded in general elections. With ample opportunity to move between the party columns in primaries, it is somewhat surprising that one-quarter to one-third of voters cast their primary votes within one party or the other. Kelley and Weir (1981, 4) observe that: "Party voters, it seems, are not in fact as willing to use the option to vote in more than one party's primary." Still, some voters do cross-over to vote in the opposite party's primary. The significant question to ask about these cross-over voters is whether they regularly and significantly alter or even influence the outcome of

primary elections. To this question, Kelley and Weir (1981, 2) answer: "The evidence indicates that crossover votes from the other party have not determined the outcome of most elections; in most cases, they have simply resulted in an even greater margin of victory for an already popular candidate." Thus, rather than altering primary election outcomes, the cross-over voters reinforce outcomes that otherwise would have occurred, but by larger margins.

The potential for raiding under the blanket primary generates wide media attention and spawns electioneering lore that is simply unwarranted by actual experience. Technically defined, raiding would occur where partisan voters of party X cross-over in sufficient numbers to help select the weakest or most vulnerable candidate in party Y. The requirements for this form of electoral subterfuge are: 1) the absence of a meaningful primary contest in party X; 2) provisions of sufficient information to identify the weaker and most vulnerable potential opponent in party Y; 3) concerted action by a large enough bloc of voters in party X to influence the outcome in the primary of party Y; and 4) the abandonment of traditional party loyalties by partisan voters to enter the opponent's primary.

In the experience of Washington state, these requirements are simply too demanding and have not been fulfilled in actual practice. Avery (1973, 238) reviews nearly three decades of use of the blanket primary and concludes: "there is only one instance where there is any evidence that this (raiding) happened – in a Seattle mayoralty primary election – and it may not have been the case there." Kelley and Weir (1981, 2) similarly find:

"There has been little evidence in the state of Washington of 'raiding' by regulars of the opposition party in order to secure the nomination of a candidate felt to be a weaker opponent." While supposed raiding may make good newspaper copy and provide colorful campaign lore, it is simply not borne out in the experience of Washington state's blanket primary.

The filing of phony candidates in the primary election of the opposing party in order to undermine a popular opponent is a form of supposed electoral subterfuge associated with the blanket primary that has in common with the phenomenon of raiding a consuming interest by media commentators and a colorful place in campaign reminiscences. As an actual consequence of the blanket primary, the phony candidate phenomenon suffers three problems. First, achieving voter attraction to the phony candidate places a set of requirements on party strategists that are even greater than those enumerated above for the raiding phenomenon. Second, there is no valid empirical evidence confirming the filing of phony candidates. Third, there is nothing distinctive about the blanket primary that would encourage filing phony candidates. The strategy is equally available in all direct primaries, whether of the closed, open or blanket varieties.

QUESTION 2: What Is The State of The Two Party System In Washington; How Is The Health of a Party Defined and Measured; and Where Do The Political Parties In Washington Fall Within That Spectrum?

Political parties are organizations that run candidates for office with the goal of winning elections. The major

parties in Washington are the Republican and Democratic parties, but a number of other parties run candidates from time to time.

Washington exhibits a wide-open and freewheeling style in its politics. The inherited legacy is a "lusty, gutsy" politics with pronounced strains of populism and radicalism (Bone, 1985, 7). The state's radicalism includes ideologies of both the left and the right which are deeply embedded in the state's populist political practices. Tendencies toward radical and populist politics are reified in the use of the initiative, referendum, and recall. Washington voters tend to be highly independent and its political parties are commonly regarded as not strong (although, see below).

What parts of these political attributes and behaviors can be attributed to the influence of the blanket primary? This question involves a tricky "chicken and egg" issue of causality: does the blanket primary create weaknesses in the political parties; or, did weak parties create the blanket primary? The direction of the flow of causality is as important as it is complex; most likely the causal influences pass in both directions. In order to sort out these complexities, it is helpful to inventory the state of health in Washington's two party system under the blanket primary.

A foremost goal of political parties is to win elections. The Republican and Democratic parties have thrived in their quest for capturing public offices on a more or less even basis. By any criterion of measurement, Washington state is an evenly divided, two party competitive system. The Democratic and Republican parties

were remarkably evenly matched in electoral outcomes, according to Hrebenar and Benedict (1991, 142), throughout the seventies and in the period from 1982 to 1986, more so than ***any*** of the other dozen mountain and Pacific states of the West. This finding is consistent with Ranney's (1976) earlier research on the 1962-1973 time period, which placed Washington as one of only six states in the West in the two party competitive category. And, Walker (1992, 45) concludes that: "Washington has been ranked as a highly competitive state. Over the years the difference between the winner and loser in gubernatorial races – whether Democrat or Republican – is slight." There is ample evidence from multiple sources that Washington state's two party system is highly competitive and evenly balanced in electoral outcomes. It lacks the more common pattern in the West where one or the other party dominates electoral outcomes, and thereby creates one very strong and one very weak party. Two party competitive status thus may be viewed as a central indicator of the well being of a party system in regularly offering voters a viable choice among candidates for elective office. The competitiveness of the parties directly contributes to Washington's relatively high levels of voter turnout. In fact, during the 1980s, Washington ranked 15th nationally in voter turnout (Nice, 1992, 73). To the extent that the blanket primary results in producing candidates whose appeal is to the median voter (see Kelley and Weir, 1981), it can be seen as contributing to and sustaining the highly competitive party system in Washington state.

Beyond two party competitiveness, measured by state-wide and legislative party electoral viability, there

are other dimensions along which the well being of parties can be assessed. One is the degree of party discipline within the legislature. Party discipline tends to be promoted within two party competitive states, like Washington, whereas one party dominant state legislatures tend to break up into party factionalism. Most Western state legislatures are part time, poorly paid, poorly staffed, with nonprofessional legislators. It is because these settings provide few incentives or motivations for party discipline or party cohesiveness that Sorauf and Beck (1988, 410) find the most disciplined and cohesive legislative parties in urban, northern states. Yet they also suggest that parties can dominate the legislative process through the power of the party caucuses. Jewel and Olson (1988, 237) identify the party caucus in Washington as contributing significantly to party cohesion. Thus, if one points to a single factor as governing legislative voting behavior in Washington, it is the party of the legislator, not constituency, special interest group, or other influences. According to research done by LeBlanc (1969, 36), moreover, the rate of party voting among Western state legislatures ranged from a low of 17 percent in California to a high of 50 percent in Washington state. Parties also play a dominant, near exclusive, role in determining the organization of the Washington legislature, its hierarchy of leadership, committee chairs and membership, and the adoption of working rules and procedures. This has led Nice (1992, 84) to conclude: "a legislator's party affiliation remains the single most defining characteristic throughout his or her legislative service."

At the city and county levels of party organization among the 50 states, Gibson (1985, 154-155) finds that

local Democratic party organizations are the strongest in Hawaii, Idaho, and Washington.

Finally, consideration can be given to the dimension of the parties' strength within the electorate. Like elsewhere in the U.S., party loyalties in the Washington electorate are considerably weaker than they were in the 1950s. This secular trend has seen the rise of PACs, candidate-oriented campaigns, and the rise of special interest groups all as partial replacement for the former dominant role parties played in the electorate. As Nice (1992, 71) suggests, "The distribution of party loyalties in Washington generally resembles national patterns," and (1992, 72) "the evidence clearly indicates that each of the major parties has a substantial group of supporters." The most recent survey of voter identification with parties reveals that in Washington state there is close parity between Republican and Democratic party identifiers, and that those calling themselves independent in Washington are nearly identical with those who similarly label themselves nationally (Nice, 1992, 71-73).

From this survey we may conclude that, while parties in Washington are generally perceived to be weak, in their complex political involvements they demonstrate remarkable areas of strength. Washington parties are among, if not *the* most, highly competitive in the Western states, due at lest in part to the blanket primary. The party caucuses in the state legislature create strong party cohesion and the single most important influence in the conduct of state legislative activities are the parties legislators belong to. At the city and county levels, the Democratic party is among the strongest in the country. Finally, the parties in the electorate command equal shares of

partisan identifiers and independents in Washington state approximate those who call themselves independents nationally. This inventory helps to place the health of the party system in Washington in perspective, where the parties can legitimately claim a central role in conducting the public's business. If there is a fear that the parties in Washington are too weak, it is not shared by citizens of the state. As Mullen and Pierce (1985, 66) report: "65 percent of the Washington state public thinks that political parties have 'too much power'."

QUESTION 3: Do The Parties Engage In And Are They Effective In Conducting Party Activities Such As Raising Funds, Promoting And Recruiting Candidates For The Party, Getting Out The Vote? Do The Major Parties Put Forth Strong Candidates That Represent The Core Views Of That Party? Do The Major Parties Engage In Meaningful Contests?

Conclusions about the strength or weakness of political parties depends upon whether one looks at how competitively effective they are in the outcome of elections or at the organizational strength of parties. In answer to question 2 above, the discussion largely addressed the former, where Washington parties were found to be highly competitive, and will not be repeated here.

Party strength organizationally directs our attention to party fund raising, recruitment and promotion of candidates, mobilizing the vote, fielding strong partisan candidates and providing meaningful contests. It is also the

case that the two parties may show important organizational differences along these indicators of strength. Thus Walker (1992, 45) suggests, after reviewing organizational variables like those involved in this question: "based on indicators such as these, the Democrats in Washington state would be classified as organizationally weak while the Republican party is the ninth strongest in the country." Thus the Republican party may be one of the strongest organizationally in the country at the state level, while, as we showed in discussing question 2, the Democratic party is particularly strong in Washington at the city and county levels (Gibson, 1985, 154-155). Nice (1992, 69) offers a similar assessment of how strong the Republican party is, but ranks the Democratic party's strength above its counterparts elsewhere in the states:

> "evidence from the late 1970s indicates that the Washington Republican organization was one of the 10 strongest state party organizations in the country and that the Democratic state organization was only slightly weaker than the national average for both parties and somewhat stronger than the average state Democratic party organization. Washington's local party organizations are stronger than their counterparts in most other states, as measured by party budgets and staffing, services provided to candidates, and issue leadership."

From this we may conclude that researchers have found the Washington state Republican party to be in the top ten nationally in terms of organizational strength, while the Democratic party is left strong organizationally, it is competitive with Democratic parties elsewhere in the 50

states and shows particular strengths at the city and county level, where its organizational base rests.

It is in the particulars of party activities where party strength or weakness gains currency. Campaigns for office at all levels of the U.S. federal system, and among all its states, have witnessed enormous increases in expenditures. The political parties remain an important source of campaign finances, generally in the U.S. and in Washington state. In the 1990 Washington state legislative campaigns, for example, the fifth largest contributor was the Senate Republican Campaign Committee and the seventh largest contributor was the Senate Democratic Caucus Committee (Seeberger, 1997, 202). State, county, legislative district and House caucus committees of both parties remained active in raising and distributing campaign funds as well. Incumbents consistently spend more than their challengers in contested elections. The margin of financial advantage in Washington, however, may not be as large as in other states. In the 1990 Washington state elections, incumbents held an expenditure advantage over challengers, but in the state Senate races that advantage was just slightly under 1.5 to 1, while in state House races it was less than 2 to 1 (Washington Public Disclosure Commission, 1991, 36). This can be contrasted to the 1990 California state elections, where incumbents outspent challengers by an 8 to 1 margin (Wall Street Journal, 1991, A8).

The relationship of party fund raising and contributions may have less to do with any secondary influences of the blanket primary than the direct constraints imposed by campaign finance reform measures. For example, in 1992 Washington voters approved Initiative

134, a proposal aimed at limiting campaign contributions. It limited a caucus or political party from contributing more than $.50 per registered voter in a candidate's jurisdiction and limited county central committee and legislative district committee contributions to no more than $.25 per registered voter (Seeberger, 1997, 165). The campaign finance reform initiative also prohibits transfers of money between candidates, prohibits fund raising during legislative sessions, and restricts taxpayer-funded mailings by state officeholders. it may be argued that initiated measures like I-134 place considerably greater constraints on party fund raising and contributions than any derivative effects of the blanket primary.

The single most important agency for recruiting and promoting candidates for public office in Washington state are the political parties. Party activity can be seen clearly in the 1994 elections, when the Republican party recruited energetic and highly partisan candidates, resulting in the largest switch in any state's Congressional delegation during the "Revolution of '94", and at the state legislative level an 18.4 percent turnover in the state Senate and an amazing 40.8 percent in the state House. The results clearly reflected the concerted effort of the Republican party to identify attractive candidates and to promote their campaigns with sufficient funding (Seeberger, 1997, 122). Similar recruitment of women candidates can be seen in activities of both parties in the 1990s, where the Republican party saw an increase over twenty years from 3 percent of its legislators to 28 percent, while the Democratic party registered the remarkable gain from 5 percent of its state legislators being women to a solid majority of 55 percent in 1995 (Seeberger, 1997, 142). In

sum, parties in Washington remain active in identifying, recruiting and promoting candidates for state-wide office as well as for the state legislature.

The Republican party in Washington has perfected the "get out the vote" campaign. It carefully identifies its core base of strength, targets key supporters through direct mail campaigns, makes phone calls to known supporters on election day, and provides transportation to the polling places. The Democratic party in Washington has "tagged along" in mirroring the leadership role the Republican party has played in this regard. The easy availability of absentee voting, including provision for permanently being registered as an absentee voter, has led the parties, especially the Republican party, to identify, inform and mobilize voters who cast the absentee franchise. In part due to the "get out the vote" activities of the two parties, Washington state ranks 15th in voter turnout nationally (Nice, 1992, 73).

The 1994 Congressional and state legislative elections illustrate how the parties in Washington continue to recruit strong candidates who reflect the core views of the party. More generally, Nice (1992, 73) argues that, once elected, "The evidence reveals that Washington's Democrats in Congress are clearly more liberal than the state's Republicans, both in the house and the senate." Washington state's Congressional delegates behave like their partisan counterparts from elsewhere around the country: "Washington's congressional delegations are ideologically similar to most members of their own parties on a national basis. Republicans vote similarly to other Republicans in the house and Washington Democrats vote as most other northern Democrats do." (Nice, 1992, 73) A

similar conclusion is reached by Mullen and Pierce (1985, 72) who suggest that: "even though the public does not view party as particularly important, the party affiliation of the winning congressional candidate does make a substantial difference." Similar differences are observable at the state legislative level, where Republican legislators tend to be significantly more conservative on taxation issues, land use control, regulatory reform, and social issues more generally. It may then be said that the two parties hold issue positions at substantial variance with each other, they recruit candidates reflective of those issue positions, and, once elected, partisan members of legislative bodies significantly reflect the different positions represented by their parties.

Lastly, here, do the parties engage in meaningful contests? Perhaps the best answer to the question is given by citizen turnout rates at the polls. Washington state ranks 15th in voter turnout, seeming to indicate that voters at least perceive meaningfulness in the contests offered to them. It cannot be ignored, at this point, that the highly competitive two party system extant in Washington state induces the parties to make the contests for elective office meaningful if they aspire to achieving their primary goal – winning elections.

QUESTION 4: What Is The Impact, If Any, Of The Open Primary System On Minority Voters In Washington?

The racial minority population of Washington state stands at 11.5 percent, including Latinos, Asians and Pacific Islanders, African Americans, and Native Americans, in descending order of size. Current Governor Gary

Locke, a Chinese-American, represents the first Asian elected governor among the continental states. A total of 7 Asians have served in the state legislature and 11 African Americans have similarly served. Seeberger (1997, 125) reports the most recent trends: "In the 1995096 Legislature, there were two Asian American members and two African American members, meaning 1.34 percent each of the total membership of the Legislature. That was down from 1993-94 when Asian Americans made up almost 3 percent of legislators and African Americans were at 2 percent." All of the racial minority legislators came from districts whose composition consisted of racial minorities being in a minority. There is not now, nor has there ever been, a racial majority state legislative district in Washington state.

There is no evidence that the blanket primary works to the electoral disadvantage of racial minority voters or candidates. There is also no evidence that the blanket primary works to the advantage of racial minority voters or candidates. If a racial minority candidate appears in the primary of one of the parties, voters from the opposite party and independents have the freedom to enter the racial minority candidate's primary and vote for her; but by the same logic, in a racially polarized election, voters from the opposite party who oppose the racial minority candidate and like minded independents can enter the racial minority candidate's primary and vote against her. There is no research evidence of either of these logical possibilities occurring in Washington state elections. Thus, the blanket primary appears to be a neutral instrument when it comes to favoring or disfavoring racial minority voters and candidates.

QUESTION 5: Are There Studies Or Empirical Evidence On The Operation Of The Blanket Primary In Washington?

This question nicely asks for my bibliographic listing of source materials that, along with my own research and my personal observations and involvements with Washington state politics, provide the background for all of the foregoing materials. The bibliographic listing consists of:

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

[Caption Omitted In Printing]

DEFENDANT'S EXHIBIT H

Analysis of Crossover and Strategic Voting

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Jonathan Nagler
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1 Overview

We undertake the analysis of primary elections from 1980 through 1996 using both academic individual level survey data, media exit-polls, and aggregate election returns on a county by county basis. We come to the following conclusions:

1. **there is very little crossover voting in general in United States primaries;**
2. **the difference in the amount of crossover voting between states with open primaries and closed primaries is not substantivelv large;**
3. **the amount of strategic behavior on the part of voters is extremely small.**

* * *

3 Basis of this Analysis

This analysis is based on publicly available survey data, and aggregate election returns from several states.

The individual level analysis is based on the following surveys that are available from the Inter-university Consortium for Political and Social Research in Ann Arbor.

- 1992 Voter Research and Surveys Presidential Primary Exit Polls
- 1988 CBS/New York Times Super Tuesday Primary Election Exit Polls
- 1988 CBS/New York Times Primary Election Exit Polls
- 1988 American National Election Studies Super Tuesday Study
- 1984 CBS/New York Times Primary Election Exit Polls
- 1980 American National Election Study

We analyze this data to determine the likelihood of voters to engage in: crossover voting, strategic voting of a positive kind, and raiding.

First, we consider the amount of crossover voting likely to happen under an open primary. This is of course the first question; if there is no crossing-over, then the adoption of an open primary has no impact.

We also examine whether there is more or less crossover voting in an open primary than a closed primary. Crossover voting in a closed primary may sound like a logical inconsistency: but many voters in closed Democratic primaries will profess to identify with the Republican party when asked, and will vote for the Republican presidential candidate in the general election. The same is true for many voters in closed Republican primaries.

Second, we consider why these voters are crossing over. There are three reasons to crossover:

- Sincere Voting: A Republican voter could feel that a Democratic candidate is the best candidate available in the entire field, and thus crossover to vote Democratic. Such a voter is sincerely trying to insure that his or her most preferred candidate has the opportunity to contest the general election.
- Second-Best Vote: A Republican voter could feel that the Republican primary is a foregone conclusion; and rather than waste their vote on a Republican candidate, they could try to insure that the Democratic candidate is the best available candidate from the lot. This would give the voter some 'insurance' in the event of a Democratic win in the general election.
- Raiding: A Republican voter could feel that the most important thing is to elect *any* Republican; and think that the best way to do this is to insure that the Democrats nominate the candidate that would be weakest in the general election. Such a voter would vote in the Democratic primary for the Democratic candidate perceived to be weakest in the general election. Such behavior presupposes a complex chain of behavioral assumptions, and an unlikely set of election day realities. First, the voter must choose to try to influence the election by electing the most likely *loser* for the 'opposing' side; rather than try to elect the most likely *winner* from the home-team. Second, the voter must have information (or beliefs) about the relative chances of success of each candidate in the

primary in a general election that is at least 4 or 5 months away.

4 Complexity of Strategic Voting

Before proceeding to the empirical analysis of the incidence of strategic voting, we lay out the reasons why it is unlikely to observe strategic voting in the context of United States primary elections.

4.1 Second-Best Strategic Voting

This requires information about the likely outcome in at least one primary. Such information might be available. For instance, in United States presidential elections, a sitting incumbent president is generally regarded as almost a sure thing in his own party's primary. Thus for instance, a Democratic voter in 1996 might have felt that Bill Clinton was certain to be the party's nominee. But uncertain of the general election outcome between Clinton and the Republican nominee, the voter might have voted in the Republican primary for Steve Forbes because the voter preferred Forbes to all other Republican candidates.

4.2 Strategic Raiding

Such behavior presupposes a complex chain of behavioral assumptions, and an unlikely set of election day realities. First, the voter must choose to try to influence the election by electing the most likely *loser* for the 'opposing' side; rather than try to elect the most likely *winner* from the home-team. Second, the voter must have information

(or beliefs) about the relative chances of success of each candidate running in the primary in a general election that is at least 4 or 5 months away. Such information is simply not going to be available. Consider recent electoral history. In 1992 even *after* sewing up the Democratic nomination, Bill Clinton was given little chances in the polls of winning the general election. During the primary it became common wisdom that Clinton had so much personal baggage that he would be a sure loser in a general election. So any Republican voter attempting to strategically 'raid' the Democratic primary might have been tempted to vote for Bill Clinton. But obviously this would not have secured the objective.

One reliable piece of evidence we have that voters *cannot* know in advance the likelihood of a given candidate winning the general election is the documented change in perceptions over time, and polls over the course of a campaign, of a given candidate's chances. The Iowa Presidential Election market offers us a reliable indicator of the informed public's perceptions of the chances of any candidate wining nomination and the general election.[2] That the prices for any candidate move over time is an indication that the public does not know who the most likely winner is. For instance, between January and March of 1996 the price of a Bob Dole share

[2] The Iowa Presidential Election Market is a real money futures market run by the College of Business Administration of the University of Iowa. The market is open to traders from anywhere in the world, access is provided over the world wide web. Participants in the market buy financial contracts, the value of which are determined by the presidential election outcome.

for the Republican Primary fluctuated between 63 cents and 50 cents. There is even more uncertainty in the public's mind as to the winner of the presidential election. The general public has no reason not to take the latest published pole as the best predictor of the general election result. Yet the polls show tremendous variability.

4.3 Elections Considered

The likelihood of crossover voting depends upon the available candidates. In the extreme case, few voters are likely to crossover to vote in a primary with only one candidate. Rather we expect crossover voting to depend upon two things: the choices available for each party, and the relative competitiveness of each party's primary. Thus to establish the likelihood of crossover voting it is important to consider crossover voting under many different election scenarios.

We analyze the following cases:

- The 1992 presidential primary: Here the republican race was not considered competitive, with George Bush running as an incumbent and only challenged by Pat Buchanan; the Democratic race was extremely competitive for many states and offered many choices.
- The 1988 presidential primary: here the Republican race was briefly competitive and the Democratic race was competitive.
- The 1984 presidential race: this offered a competitive Democratic primary, and a completely uncompetitive Republican primary.

This was an excellent opportunity for Republican voters to crossover.

- The 1980 presidential primary: this race offered interesting primaries in both parties; giving voters of both parties the temptation to crossover.

5 Cross Over Voting

5.1 Definition: Open vs. Closed Primaries

Most primaries in the United States are commonly classified in one of two categories: open or closed.

> In most states where voters declare their party preference when they register to vote, 'closed' primaries are held; only voters registered with a particular party are allowed to participate in that party's primary. Some states have modified this system and allow citizens who register as independent or state no party preference when they register to select the party ballot of their choice. Selecting a party ballot usually puts these voters on the registration rolls as members of the party. In states without party registration, 'open' primaries are held. Voters either choose a party ballot before they enter the polling booth or in states where the Republican and Democratic primary races are on the same ballot, voters may cast a ballot in either party primary once in the polling booth. (McGillivray, 1993: vii)

We used McGillivray's classification of states in determining whether they had open or closed primaries. Thus a closed primary is one in which only voters registered as

party members are eligible to cast ballots. An open primary is one in which voters are not required to be registered as party members to cast ballots.

5.2 Definition: Crossover Voting

We consider a crossover voter to be when a Democratic voter votes in a Republican primary, or when a Republican voter votes in a Democratic primary. We do not consider votes in either primary by independent voters to be crossover votes. We feel that any definition of crossover voting that counts independents is not appropriate for American politics, where an increasing number of voters now claim to be independents. The American National Election Studies has been asking respondents "Generally speaking, do you consider yourself a Republican, a Democrat, an Independent, or what?" since 1952. In the 1990s the percentage of respondents claiming to be Independent has been over 35%.

5.3 Measurement of Crossover Voting

To determine the difference in the amount of crossover voting between open and closed primaries we must first find a way to measure the amount of crossover voting in closed primaries. This might seem like a contradiction: by definition the members of the Democratic party are not able to vote in a closed Republican primary, and members of the Republican party are not able to vote in a closed Democratic party. However, party "membership" is not really a useful concept in this case. Since people become party "members" by the act of registering to vote, not by

some voluntary act independent of voting, party membership is not really what we want to know. In a closed party we could observe that there are no "crossover" voters simply because the criteria we use to assign someone to a party is observationally equivalent to their already having crossed over. For instance, consider a state with closed primaries; and an electorate that has not previously registered with either party, but is 50% Republican and 50% Democratic. If in a given election 1 out of 5 Democratic voters chooses to vote in the Republican primary we would register them as Republicans; and record that the electorate was 60% Republican and 40% Democratic – with zero crossover voting. But this simply isn't right.

So, what to do? Using aggregate data, we could observe the voting behavior over time of individuals in a state to see how Democratic or how Republican they are. But with available survey data, there is an easier and more direct method. A standard question on both academic surveys and media exit polls of voters is designed to determine which, if either, party the voter identifies with. For instance, in 1992 Voter Research and Surveys asked voters leaving the primary polling place "No matter how you voted today, do you usually think of yourself as a: 1) Strong Democrat. 2) Not strong Democrat, 3) Strong Republican, 4) Not strong Republican, 5) independent, 6) something else?"

If we look at the data for the 15 states with **closed primaries** where VRS was in the field, we see that 3% of voters in closed Democratic primaries claim to be Republican identifiers, and 1.9% of voters in closed Republican

primaries claim to be Democratic identifiers.[3] This data is presented in Table 2.

[TABLE 2 OMITTED IN PRINTING]

Now for comparison purposes, lets look at the proportion of voters in **open primaries** claiming to identify with the opposite party (Table 3). This is a clean measure of the amount of crossover voting. Turning again to the VRS survey for 1992, we have data for 12 states with open primaries. 5.3% of voters in open Democratic primaries reported to be Republican identifiers; and 4.2% of voters in Republican primaries claimed to be Democratic identifiers.

[TABLE 3 OMITTED IN PRINTING]

Now examining individual states we see that the range of crossover voting was not very high (Tables 4 and 5. In the **closed primary** states the most crossover voting in the Democratic primary was in Louisiana, 7%.[4] The least was Kansas with 1.4%. On the Republican side Connecticut had the greatest amount of crossover voting, only 2.9%; and Oklahoma had the least, only 0.5%. In California, 2.0% of voters in the Democratic primary claimed to be Republican identifiers, and 1.4% of voters in the Republican primary claimed to be Democratic identifiers.

---

[3] The Republican count is based on only 14 states.

[4] Louisiana is well known for having a variant of a blanket primary for choosing most of its elected officials. However, it uses a standard closed primary to choose its delegates to the national convention.

Looking at individual states with **open primaries** we can get some idea as to the variance in crossover voting that different strategic situations can present (Table 6. Even with open primaries, the highest reported amount of crossover voting in open Democratic primaries is only 7.8%; in Mississippi 7.8% of voters in the Democratic primary claim to identify with the Republican party. And in open Republican primaries the highest level of Democratic identifiers is in Georgia, where 8.7% of voters claim to identify with the Republican party.

Of course to test further for the possibility of increased crossover voting under different strategic or contextual possibilities it makes sense to look at different election years. Thus for 1988 we examined both CBS/NY-Times exit poll data, and National Election Studies surveys.

In the 6 states we have CBS/NY-Times exit poll data for that held **closed primaries,** we again had little crossover voting. Only 2.8% of voters in closed Democratic primaries claimed to be Republican identifiers, and 3.0% of voters in closed Republican primaries claimed to be Democratic identifiers. This is shown in Table 7.

Demonstrating that context can matter, we saw significantly more crossover voting in **open primaries** in 1988 than 1992. In the 4 open primaries we have CBS/NY-Times exit polls for 10.4% of voters in open Democratic primaries claimed to be Republican identifiers. In the 1 open Republican primary we have such exit poll data for 6.8% of voters claimed to be Democratic identifiers (Table 8).

We see relatively little variance in crossover voting across the states with **closed primaries**. There is large variance across the 4 states with **open primaries**: the amount of crossover voting ranges from 2.9% (Ohio) to 20.5% (Indiana). This is shown in Tables 9 and 10.

In 1984 we analyzed the CBS/New York Times exit poll data for Democratic primaries in five states with **open primaries**: Alabama, Georgia, Illinois, Ohio, and Texas. This was a perfect year to find high amounts of strategic crossover voting by Republicans as the Republican primary was of no interest (Ronald Reagan was unchallenged). Other than local races, there was no reason to vote in the Republican primary. Yet in our five states, only 276 of 6213 voters in Democratic primaries surveyed (4.4%) claimed to be Republican identifiers. The highest crossover rate was in Georgia (7.2%), the lowest in Texas (1.6%). The results are given in Tables 11 and 12.

In the three **closed primary** states we looked at for comparison purposes in 1984 (California, Pennsylvania, and New York), only 142 of 6352 voters surveyed (2.2%) in the Democratic primary classified themselves as Republican identifiers (Tables 12 and 13. So, the difference in crossover voting between open and closed primaries, even in a year that we expect to lead to large amounts of strategic voting, is only 2.2%.

6 How Many Raiders?

While the amount of crossover voting necessarily puts an upper bound on the amount of strategic behavior by voters, we still want to know the motivation of the crossover voters. The most pernicious attempt at strategic

voting would be for voters to attempt to 'interfere' and 'sabotage' the primary of the other party by crossing over and voting in the opposing party's primary in an attempt to give the other party the *weakest* general election nominee. We looked for raiders in the 1988 Super Tuesday primaries. This is an appropriate election to search for raiders because the requisite circumstances for raiding were present: the Republican primary was largely a foregone conclusion in the minds of most voters (George Bush was looking unbeatable), and the Democratic primary offered a large selection of candidates – some of whom were probably not likely to be strong candidates in a general election.

To determine if a crossover voter is attempting to act as a raider we need to know if the voter is intentionally voting for a candidate that they perceive to be a loser in the general election. Here are the requirements a voter had to meet for us to classify them as a raider:

1. They had to crossover and vote in the primary of the party that they did *not* identify with.

2. There had to be a candidate available in the primary they voted in whom they did *not* vote for, and:

   (a) Who they preferred to the candidate they did vote for, and

   (b) Who they felt had a better chance of winning the general election than the candidate they voted for.

3. They had to want the party they identified with to win the general election.

We thus need quite a lot of information about a voter's preferences regarding the candidates, and the voter's beliefs about the relative likelihood of candidates winning the general election. The National Election Study's 1988 "Super Tuesday Study" conducted by the Center for Political Studies of the Institute for Social Research, was designed to elicit this type of information from voters. The study consisted both of a pre-primary questionairre, and a post-primary interview that was administered to 1688 respondents, 719 of those respondents reported voting in a primary.

We determined whether a voter crossed over by comparing their self-reported partisan identification to the primary they voted in. A voter who reported voting the Republican primary but claimed to identify with the Democratic primary was classified as a crossover voter; as was a voter who reported voting in the Democratic primary but claimed to identify with the Republican primary. To determine whether these crossover voters had a more preferred candidate available to them, we utilized their responses to the "Feeling Thermometer" questions the NES asked. The precise question asked was:

> Now let's talk about your feelings toward the people you know something about. I'll read the names of a person and I will ask you to rate that person on a thermometer that runs from 0 to 100 degrees. Ratings between 50 and 100 degrees mean that you feel favorable and warm toward that person. Ratings between 0 and 50 degrees mean that you don't feel too favorable and are cool toward that person. You may use any number from 0 to 100 to tell me how favorable

> or unfavorable your feelings are for each person. If you don't feel particularly warm or cold toward the person, you would rate the person at the 50 degree mark.
>
> The first person is XXXXXXXXXXX. How would you rate (him/her) using this thermometer?

If a respondent listed one of the candidates in the primary they voted in as having a *higher* thermometer score than the candidate they voted *for*, we considered them to be potential raiders.

Raiding also requires the voter to consciously vote for a candidate they expect to have little chance in the general election. Again, the National Election Study explicitly elicits the respondents' opinion on this. Respondents were asked:

> Now, thinking about general election to be held this November we'd like you to tell us about some of the candidate's chances of winning the presidency in 1988. As before, we will use a scale that runs from 0 to 100, where 0 represents no chance of winning the presidency, 50 represents an even chance, and 100 represents certain victory.

Thus, we can compare the respondents' explicit evaluation of the chances of the candidate he or she voted for with the chances of each of the other candidates available in the same primary. If the respondent votes for a candidate that they both "feel less warmly" about, and think has a lower chance of winning the general election, then another available candidate – then we cannot but think that their intention is to raid, not to insure that each primary will produce a candidate they view favorably.

We provide results in Table 16. There, we see that the results are as follows: 97 of the 719 voters (13.5%) reported crossing over. However, of the 719 primary voters, only 557 of them were willing to assign feeling thermometer ratings to the candidate they voted for. 65 of these 557 voters crossed over. 35 of the 291 (12.0%) voters in open primaries (12.0%) crossed over, and 30 of the 266 voters (11.3%) in closed primaries crossed over. Thus as we have consistently seen, the crossover rate is low. Of the 65 crossover voters, 9 reported motivations consistent with raiding! Of these, 4 were in open primaries, and 5 were in closed primaries.

We broke the crossover voters down further by motivation. We defined **true supporters** as people who crossed over to vote for the candidate who they regarded as the best option *in either primary* according to their feeling thermometer rankings. We defined **second best voters** as people who crossed over to vote for the *best* candidate available in the primary they voted in, though their first choice was available in their own primary: these were people who presumably thought that their own primary was a foregone conclusion; but wanted their most preferred candidate from the other primary available as an alternative in the general election should their own party's candidate lose in November. These are people looking for insurance. We defined **positive strategic** voters as voters who crossed over to vote for a candidate presumably because they felt their own primary was a foregone conclusion, and while they did not vote for their most preferred alternative available in the primary they were voting in, there was no preferred alternative *with as high a perceived chance of winning the primary*. Thus again,

these were voters who we felt were trying to get some insurance for the general election.

Of the 35 voters who crossed over in open primaries, 13 were **true supporters** – voters crossing over because the grass was greener on the other side and they found their favorite candidate there. 14 of these 35 crossover voters met our conditions for being **second best voters**: they were voting for their preferred candidate in the primary they were voting in. Of the 8 remaining voters, 3 were **positive strategic**, 4 were **raiders**, and 1 did not fit any of our categories.

Of the 30 voters who crossed over in closed primaries, 10 were **true supporters**. 11 were **second best**, 3 were **positive strategic**, 5 were **raiders**, and 1 was not classified in any of our categories.

7 Conclusion of Individual Analysis

We have demonstrated that open primaries do not lead to a substantively large increase in crossover voting over closed primaries. And we have argued that the existing literature on voter behavior suggests that any crossover voting that occurs will be motivated by voters' desire to vote for their first-choice candidate, or to a lesser extent, to avoid wasting their vote. Voters will simply not have the information necessary to engage in raiding behavior in primaries. We find that our empirical analysis of the 1988 Super Tuesday primary provides overwhelming evidence to support this claim. By carefully examining the voters' evaluations of the available candidates, and the voters' perceptions of the candidates' chances of winning both the primary and general election, we have been able

to demonstrate that fewer than 2% of voters in the primary engaged in raiding behavior.

It is our view that the blanket primary will not lead to large amounts of strategic behavior by voters. The possibility of strategic behavior in a primary is significantly different than in multi-candidate general elections.

* * *

8.3 What has the aggregated electoral data demonstrated?

To conclude, we have shown that there was not a great deal of crossover voting in the aggregated data we examined using 1992, 1994, and 1996 county-by-county electoral returns from Ohio and Washington, across a number of different primary elections. In general, we found in the ecological estimates that crossover voting averaged 12% for the thirteen races we examined.

This analysis of the ecological data, then, leads us to have much more confidence in our hypothesis that the incidence of crossover voting in open and blanket primaries is not very great. The evidence presented here cross-validates our empirical results using the exit poll data earlier in this report. Here, we do estimate that the extent of crossover voting in open and blanket primaries is slightly greater than we found using the exit poll data from a number of recent presidential primaries across many states. This could be the result of one of two phenomenon. On one hand, our ecological analysis might be overestimating the incidence of crossover voting. If that is the case, **then the amount of crossover voting in these races is much lower**. On the other hand, if our

ecological analysis is correct but the exit poll analysis is incorrect, **then the amount of crossover voting in these races is correct.** But in either case, we are very confident, on the basis of two fundamentally different types of empirical evidence and statistical approaches, that the amount of crossover voting in open and blanket primaries is no higher than the level we have estimated using the ecological data. Hence, the amount of crossover voting in open and blanket primaries is relatively slight.

Additionally, the ecological results in this section of our report help to provide answers to two other important questions. The first concerns the incidence of crossover voting in non-presidential primary elections. We have shown above (and just discussed in the previous paragraph) that we find little support for the argument that the incidence of crossover voting is higher in sub-presidential primaries. Also, using the ecological data, we have found that the incidence of crossover voting in visible state-wide races is not any greater or lesser than for less prominent state-wide races.

Last, we have provided some evidence here that crossover voting in blanket primaries is not dramatically higher than in other types of open primary systems. Washington's blanket primary process is very similar to what might be instituted in California; using the ecological data we have provided evidence that the blanket primary in Washington does not produce levels of crossover voting which are much different from levels of crossover voting in other types of open primaries (for example, in Ohio).

9 Conclusion

In this report we have presented an extensive array of data analysis: spanning a variety of primary election years, different states, various types of primary election institutions, different types of data and different types of statistical analysis. Our purpose has been to determine what the extent of crossover voting is in states with open and blanket primaries. Additionally, we have also probed into the data further to understand what motivates individual voters to crossover and vote for candidates of the opposing party – in particular, whether these voters are doing so for strategic reasons.

We began this report by discussing the relevant academic literature on strategic voting in political behavior and on crossover voting in primary elections. There we noted that in this literature the estimated incidence of strategic political behavior, of crossover voting, and of primary election "raiding", is relatively slight. Additionally, we briefly mentioned some of the problems which we have observed with the empirical analysis in the literature.

We then produced our own extensive analysis of both the publicly available survey data and of some aggregated electoral statistics from Ohio and Washington. Using different statistical approaches to analyzing these different databases, we have developed three conclusions about crossover voting in open and blanket primaries and about the potential for strategic voter behavior in open and blanket primaries:

1. there is very littler crossover voting in general in primary elections in the United States;

2. the difference in the amount of crossover voting between states with open primaries and closed primaries is not substantively large;

3. the amount of strategic behavior on the part of voters in primary elections is small.

We believe that these conclusions shed light on what will happen when California voters encounter the new open primary system in the future. There is no reason to believe that the amount of crossover voting will be any different in California than in the many cases we have examined. Also, we believe that our results show that most of the crossover voters will be motivated to cast ballots for opposing party primary candidates simple because they prefer those candidates to the candidates offered in their own party's primary, or they view their own party primary as a foregone conclusion and want the best possible set of candidates to choose from in the general election. We believe that few California primary election voters will engage pernicious raiding in the opposing party's primary.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
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DEFENDANT'S EXHIBIT I

T. Anthony Quinn
2743 Marty Way
Sacramento, Calif. 95818

MEMORANDUM ON THE IMPACT OF PROPOSITION 198

By. T. Anthony Quinn PhD

The purpose of this memorandum is to look at Proposition 198, the measure creating an open "blanket" primary for California, from a number of different perspectives.

Section One provides an analysis of the vote on this measure at the March 1996 primary. Using exit polls and turnout figures it is possible to show that large majorities of both Democrats and Republicans voted for this measure.

Section Two examines the history of "anti-partyism" in California to show that the vote in favor of Proposition 198 conforms with the long held preference of California voters for limiting the power of political parties and for expanding the voter franchise. This section also discusses the impact of direct democracy, the initiative process, on the political parties.

Section Three examines the phenomenon of disenfranchised voters who are left out of the political process because they are not of the dominant political party in safe legislative districts. This section includes a numerical analysis of the safe districts showing how many voters

are denied participation in the selection of their legislator and member of congress as a result of the closed primary. It is clear that one of the goals of the electorate in enacting Proposition 198 was to extend the franchise to these voters.

Sections Four and Five examine the direct impact of the open primary, first on the two party system and second on the political parties in California. Section Four shows that it is possible to have vigorous two party competition, as Washington State has, within the context of the open primary, which Washington has used for many years. Section Five lists the functions and activities of the parties in California, none of which are burdened by Proposition 198.

NOTE: All election numbers for California are taken from the official statements of the vote and reports of registration of the California Secretary of State.

Section One

VOTING ANALYSIS – PROPOSITION 198

Proposition 198 was enacted by California voters at the 1996 primary by the following vote:

Voting YES:	3,340,642 (59.51 percent)
Voting NO:	2,273,064 (40.49 percent)

Proposition 198 was the only one of the five initiatives on the 1996 primary ballot to pass.

* * *

Vote by Party:

Proposition 198 was endorsed by a large majority of both Democratic and Republican voters. The Los Angeles Times exit poll found that 61 percent of Democrats, 57 percent of Republicans, and 69 percent of independents voted for Proposition 198. It passed by a wide margin among all voter groups, except self defined "very conservative" voters. It passed handily among white and minority voters. The exit poll found that 60 percent of whites favored the measure and 63 percent of minorities.

The exit poll results are very close to the results of the actual vote. As is usually the case, more people registered with the major parties voted in the primary than independent or minor party voters. Following is the official canvass turnout for the 1996 primary as reported by the Secretary of State:

Turnout By Party Registration

Democratic:	2,822,460	(46.41 percent)
Republican:	2,660,943	(43.75 percent)
American Independent:	58,597	(.96 percent)
Green:	29,690	(.49 percent)
Libertarian:	21,746	(.36 percent)
Natural Law:	9,847	(.16 percent)
Peace & Freedom:	10,462	(.17 percent)
Reform:	40,199	(.66 percent)
Non-Partisan Voters:	427,895	(7.04 percent)

Expressed another way, 90.16 percent of voters in the 1996 primary belonged to one of the major parties; 2.80

percent belonged to one of the six minor parties, 7.04 percent are not registered with any political party.

Apportioning the Los Angeles Times exit poll findings to actual turnout, the results are as follows:

Democrats voting YES:	1,721,701
Democrats voting NO:	1,100,759
Republicans voting YES:	1,516,738
Republicans voting NO:	1,144,205

620,942 more Democrats voted YES on Proposition 198 than voted NO, and 372, 533 more Republicans voted YES on Proposition 198 than voted NO. This occurred despite ballot arguments encouraging a NO vote on Proposition 198 signed by both major party chairs. It is readily apparent that party *registrants* refused to follow the advice of party *leaders* on the issue of the open primary as embodied in Proposition 198.

Regional Voting Patterns:

Proposition 198 did best in politically marginal areas and did worst in highly partisan areas.

It carried every county in California and 75 of the 80 Assembly districts. The closest county was San Francisco where the vote was 50.66 percent in favor, 49.34 percent opposed. The next closest county was Alameda County where the vote was 52.21 percent in favor, 47.79 percent opposed. These are also the two heaviest Democratic counties in California. The five Assembly districts where Proposition lost, narrowly in each district, are located in San Francisco, Oakland, and south-central Los Angeles, and are the most Democratic Assembly districts. There is

some evidence of this same behavior among Republicans, the NO vote in heavily Republican Orange County was above the statewide NO vote.

In these highly partisan areas, the political parties tend to be the strongest, these voters are more likely to follow the leadership of their respective parties. As it was, the party leaders only managed a slight majority for their position in their most loyally partisan areas. In the less partisan, more politically marginal areas, the party leaders suffered overwhelming repudiation.

Declining Party Loyalty and the Passage of Proposition 198:

There is a long history of independent voting among Californians. While the state is becoming more polarized, with the San Francisco area more liberal and southern California more conservative, loyalty to the individual parties has declined. A larger percentage of Californians are registered as "non-partisan" today than 30 years ago, a smaller percentage as Democrats or Republicans. Declining party loyalty helps explain the strong YES vote on Proposition 198.

Californians also have a history of ticket-splitting which also explains the YES vote. In 1994, Californians elected a Republican governor and a Democratic senator; a Democratic lieutenant governor and a Republican attorney general. Not since 1946, has one party swept all the statewide offices. Strong legislators regularly run far ahead of party registration.

Historically California voters have not been "deliverable" by political machines or bosses. The Progressive Reforms

early in this century were a reaction against bosses. Californians have traditionally favored more not less political competition. This history is reflected in the strong YES vote for Proposition 198 among adherents of both political parties.

Why Party Leaders Could Not Deliver a No Vote on Proposition 198:

While California voters are generally loyal to their party's *candidates*, they are not loyal to party *leaders*. It should be no surprise that a majority of registered Democrats and registered Republicans opted for a more competitive and open political process by voting for the open primary, and that majorities of both parties rejected the more restricted and closed process urged upon them by their party leaders. This is fully in keeping with political behavior of California voters and why California has always been described as a "weak party" state.

It must be remembered that party chairs and other statewide officials are not elected by party registrants but rather are selected at conventions attended by a minuscule number of party activists. There are numerous examples of party registrants refusing to follow the lead of party leaders.

- In each election, consultants and the parties themselves publish slates of candidates and ballot measure positions urging their adherents to follow their leadership. They don't; the influence of partisan slate cards upon the actual voters is minimal at best.
- In state with far more registered Democrats, Republicans constantly win statewide office despite the partisan urgings of Democratic leaders.

- When Republicans urged Californians to adopt Republican plans for reapportionment four times in the 1980s, they even failed to carry heavily Republican Orange County.

In California, where party leaders are *not* elected above the county level, it is common for the party registrants to hold different views on organizational issues than party leaders. That is the case with Proposition 198, where both parties voted through their registered members to support an open process in contravention of the advice of their party leaders. In this matter, the party leaders do not represent the party because the party itself has spoken differently at the ballot box.

Section Two

CALIFORNIA'S HISTORY OF ANTI-PARTYISM

California is known as an "anti-party" state. It has a political system that gives its political parties form but little function. The state prefers weak political parties and has purposely kept them weak. Professors Bell and Price in *California Government Today* describe the situation very well:

> In theory the British monarch presides over the British Commonwealth of nations; and in theory, California's political parties are directed and coordinated by a three tiered system of state conventions, state central committees, and county central committees. But in reality none of this happens. For the most part, California's

> official party organizations play only a minor role in influencing and shaping state politics.[1]

Bell and Price go on to note that "The main reason California's political parties have traditionally been so weak and ineffective hinges largely on key historical features." California began as a Republican state in the years following the Civil War, largely because California has sided with the Union and was populated by people from Republican leaning states. As political machines developed in the late 19th Century, they developed within the context of the Republican party. California also experienced much of the Gilded Age political corruption associated with late 19th Century urban organizations, especially the political machine dominated by the Southern Pacific Railroad. Muckraking journalist Frank Norris described the railroad in *The Octopus* as "the leviathan, with tentacles of steel clutching into the soil, the soul less force, the iron charted power, the monster, the octopus."

In the early 20th Century California became imbued with the Progressive Reforms that promised to end political control by the railroad. When the San Francisco district attorney was assassinated in the courtroom while prosecuting the city's notorious boss, Abe Ruef, his task was taken over by Hiram Johnson, an active member of the Lincoln Roosevelt League of Republican reformers. Most political contests took place within the Republican party, and Johnson captured that party's nomination for governor in 1910, and went on to be elected. No more anti-party California politician every existed; he set out to

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[1] *California Government Today*, Charles G. Bell, Charles M. Price, 1988, page 141

destroy the political bosses and the railroad by destroying the political parties. In his classic study of California politics, *Ronnie and Jesse*, noted journalist Lou Cannon described the lasting impact of Johnson's anti-party politics:

> (These) political changes have haunted California's electoral structure ever since the Johnson era, and are primarily responsible for the state's political exceptionalism. . . . One of the requirements of that exceptionalism was a politics dominated by personalities. The Progressive movement was not the one-man affair that it often seems in retrospect, but Hiram Johnson came to personify the entire reform movement precisely because he appeared to stand apart from the party structure and appeal directly to "the people".[2]

Cannon wrote this at the height of Ronald Reagan's governorship, partially to explain why the conservative Republican Reagan had been so successful in an otherwise Democratic state, an explanation he attributed to the long history of personality rather than party politics. Cannon writes that the reformers specifically established a system in which parties would have no power. "Reformers of that day seem to have reasoned something like this: the large corporations and special interests dominate the political parties; hence destroy the parties." This phenomenon in California has come to be known as "anti-partyism."

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[2] *Ronnie and Jesse, A Political Odyssey*, Lou Cannon, 1969, page 48

Reformers exercised "anti-partyism" in a number of ways, all but one of which are still with us. Owens and Costantini in their study *California Politics and Parties* list four main legacies of the Progressive era:

> Population mobility within the state and heavy in-migration from without the state make the development of stable, locally based party organizations difficult. Other factors are statutory in nature and in large part deliberately designed to produce organizational debility. Four measures adopted by the Progressives half a century ago have particularly served to place California's parties in a legal straitjacket. First, the system of nonpartisan local elections has acted as a deterrent to the development of strong party organizations at the grass roots level. Second, the establishment of a comprehensive civil service system has made it impossible to build strong party organizations through the distribution of patronage. Third, provisions for direct legislation through the initiative and referendum have diminished the role of parties in the formation of public policy. Fourth, the crossfiling system of making nominations for partisan office allowed members of one party to run in the primary of the other party and to receive its nomination for even the highest public office while the official party was forced to sit idly by.[3]

The cross filing system existed in California from 1911 to 1959. Under this system, a legislator or member of congress could file to run in both the Democratic and Republican primaries, and so long as he or she won their own

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[3] *California Politics and Parties*, John R. Owens, Edmond Costantini, 1970, page 4

party nomination, they would win the nomination of the other party as well. Reproduced as Appendix A is the official result of the 1950 Assembly primary and general election. The party of the legislative candidate is not shown, only the number of votes received as a Democrat and as a Republican. On the general election ballot, the winners, usually incumbents, are shown as the nominees of both parties.

California went from being a Republican to a Democratic state in the 1930s, as demographic change and the New Deal brought droves of Democrats into the state. Democrats hated cross filing because it allowed Republicans to "hide" their partisan leanings while seeking supposedly partisan office. Democrats did not succeed in winning control of California state government until 1958, whereupon in 1959, they promptly abolished crossfiling.

The end of crossfiling marked the end of what was known as the Nonpartisan Legislature, and the beginning of a real two party system in California. But it did not result in a shift of political power to the parties, but rather to the legislative leaders. The California Assembly has been a partisan body since the Speakership of Jess Unruh (1961-1969), the California Senate since the early 1970s. But that doesn't make them "party" bodies. The state central committees play no role in partisan legislative politics. Decisions on who will be supported for the legislature, who will be financed, who will be professionally managed has been made by legislative leaders since the days of Unruh, and this is true in both parties.

In 1996, the struggle to hold the Republican Assembly was led by Speaker Curt Pringle and his political lieutenants, none of whom worked for the state Republican party. The effort to win back the Assembly was directed by Minority Leader Richard Katz and consultants he choose, none of whom were under control of the state Democrats. Legislative Democrats are credited with putting together an effective campaign under the direction of Katz and Senate President Pro-Tem Bill Lockyer, who headed the Senate Democratic effort and raised more than a million dollars for each targeted Senate district. Party leaders and party organizations played only a minimal role in the 1996 legislative contests.

This has been the case since Speaker Unruh seized the power to elect legislators from the lobbyist community in the 1960s. Legislators have carefully kept the party officials out of their political campaigns. As Bell and Price point out:

> Throughout most of this century, incumbent officeholders have dominated and controlled their respective parties' State Central Committee. Incumbents knew one another, had more prestige than their non-officeholder colleagues, and could appoint many additional members to the SCC. Historically little was done by the SCC without the incumbents' blessing.[4]

In the more partisan context following crossfiling, the parties became adjuncts of the legislative-executive leaders. Central committees meet to debate issues, write platforms, run registration drives, and perhaps most

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[4] *California Government Today*, page 147

importantly, act a conduit for party funds. The political parties can mail literature to members at a lower postal rate cost than can candidates, therefore, funds to support candidates are often run through the parties. But the California parties, unlike elsewhere, have no role in setting state policy, cannot direct patronage, and have no say over who gets on the ballot. California managed to develop a two party system in which the parties themselves remained historically weak. During the past 16 years of Republican governors, the governors were the Republican party leaders. Gov. Deukmejian choose political allies and regularly installed them as GOP chairs during his eight years in office. Gov. Wilson has been at odds with some party activists; thus he has largely ignored the state party. During the 1996 presidential campaign it was patently obvious that Wilson and his political operatives ran the Dole campaign in California, not the state party.

Democrats have coalesced party control through strong legislative leaders such as former Speaker Wille Brown. Since Democrats controlled the legislature while Republicans controlled the governorship, it was as easy for Democratic legislative leaders to dominate their party as it has been for GOP governors to dominate the Republican political scene.

There is another reason why California parties remain weak, and that is the desire of the people to make policy decisions themselves through he initiative process. Undeniably, this has weakened the legislature; it further weakens the parties. The following table shows the number of successful initiatives in recent decades compared to earlier times.

Number of Initiatives and Their Success Rate

Decade	*Qualified Initiatives*	*Adopted Initiatives*	*Percent*
1912-1919	30	8	27%
1920s	35	10	29%
1930s	35	9	26%
1940s	19	6	32%
1950s	10	2	20%
1960s	9	3	33%
1970s	22	7	32%
1980s	44	21	48%
1990-1996	49	18	37%

Bell and Price trace the popularity of the initiative in recent decades (more initiatives were approved in the 1980s than in the prior four decades combined) to "a continuing decline in public confidence in government leaders and political institutions." It is no exaggeration to say that the major policy decisions of the past two decades have come about via the initiative. Californians want tough law enforcement; they have rewritten the criminal justice system via Three Strikes, the Victims Bill of Rights, the death penalty law – all enacted through initiatives. California's fiscal structure is the embodiment of Proposition 13 and its successors. Air and water discharges must meet Proposition 65 standards. The coastal act and the entire system of land use along the coast results from an initiative. The system of campaign reporting, legislative term limits – all initiatives. The list goes on and on.

The dominating influence of the initiative is certainly evident in the fact that the names Howard Jarvis, Paul Gann and Harvey Rosenfield are known to far more Californians than the names of the party chairs, or even most legislators.

The passage of Proposition 198 reflects this California political behavior. The ballot arguments of the party chairs were rejected because these are not people the public associates with major policy. Voters have shown disenchantment with legislative leaders as well by embracing term limits (Proposition 140) and campaign reform (Proposition 208), actions which directly threaten political power of incumbent legislators. The public has consciously acted to weaken the political class in California whenever given the opportunity in recent elections.

In fact, many people think we have too strong a two party system in California. Criticism is often directed at the congressional delegation as being too polarized to work together on behalf of the state. The plethora of initiatives in often blamed on partisan gridlock in Sacramento that keeps the Republican governor and Democratic legislature from coming to consensus on legislation. Voters have taken power into their own hands through the initiative in reaction to this partisan gridlock.

Proposition 198 was part of that process. Voters are neither aware nor interested in the well being of California's political parties since they do not see the parties as significant political forces whose activities are relevant in their lives. As Owens and Costantini well put it:

> California's anti-partyism reveals itself most directly in the official organization of its political parties. They are, quite simply, weak and ineffectual. Indeed, for many observers familiar with politics in other large urban states, they scarcely deserve to be called "organizations" at all.[5]

Section Three

CALIFORNIA VOTERS DISENFRANCHISED BY THE CLOSED PRIMARY

Approximately one quarter of California voters are effectively precluded from participation in the election of their state legislator or Member of Congress because they are not a member of the dominant political party in a district "safe" for that party.

In these districts, the decision as to who will be elected is made at the primary election. Under the closed primary system, voters who do not belong to the dominant party cannot vote in the primary. Their vote is meaningless in the general election because the district is not competitive between the parties.

A district may be considered "safe" if it meets several criteria:

- The district has not been contested between the parties since it was created in the 1991 reapportionment
- The area covered by the district has been historically dominated by one party,

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[5] *California Politics and Parties*, page 4

- No significant money was spent in 1994 or 1996 opposing the nominee of the dominant party
- The incumbent won by more than 55 percent of all the votes cast in both 1994 and 1996

One measure of a "safe" district is its rating by the California Target Book, a nonpartisan analysis of all California legislative and Congressional districts. The Target Book rates districts as "target", "strong Democrat/strong Republican", and "safe Democrat/safe Republican". All districts considered "safe" in this report were rated "safe" in both 1994 and 1996 by the Target Book, and are rated "safe" for the incumbent party in the 1998 election[1].

A majority of California legislative and Congressional districts can be rated as "safe." There are several reason for this.

- Although California is very competitive for statewide office, it is becoming more polarized at the district level. The San Francisco Bay Area becomes more Democratic each election, while the Southern California suburbs become more Republican.
- The 1991 Supreme Court Masters reapportionment created the maximum number of "majority-minority" and "minority influence" districts in response to the Voting Rights Act. This tended to "pack" Democrats in heavily minority and very safe districts, with the consequence that more safely Republican districts were created outside the minority areas. This was especially evident in the Central Valley, an area with traditionally marginal districts.

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[1] The author is co-editor of the California Target Book

- The Masters reapportionment also created a large number of truly competitive districts, as evidence by the shift in control of the Assembly twice in this decade. This has lead the parties to target a greater number of marginal districts, but consequently to target fewer "long shot" districts. The Masters reapportionment, which ignored the needs of incumbent legislators, resulted in more truly competitive districts *and* more truly safe districts, especially in heavily minority areas.

California had 15,662,075 registered voters for the 1996 general election. Forty-six of the 80 Assembly districts met the criteria as "safe" districts in 1996. The number of voters *not* in the dominant party in these 46 districts was 3,888,566. These voters were effectively disenfranchised from voting for State Assembly because they did not belong to the dominant party, and could not vote in the primary election which determined the nominee. The disenfranchised voters for Assembly equaled 24.8 percent of all California voters. See Table 1.

Twenty-one of the 40 State Senate districts met the criteria as "safe" in 1994 and 1996 (only half were up each year). The number of voters *not* in the dominant party was 3,686,530. This number is equal to 23.5 percent of all California voters. See Table 2.

Thirty-three of the 52 Congressional districts met the criteria as "safe" in 1996. The number of voters *not* in the dominant party was 4,492,379. This number is equal to 28.7 percent of all California voters. See Table 3.

It is also important to remember that a voter disenfranchised for Assembly is most likely disenfranchised

for Senate and Congress as well. Under the 1991 reapportionment, Senate districts consist of two whole Assembly districts. The Court Masters applied the same Voting Rights Act and state constitutional standards to Congressional districts as they did to legislative districts.

Section Four

WASHINGTON STATE'S STRONG TWO PARTY SYSTEM

Washington shares with its neighbor Oregon and a number of northern tier states a political system heavily influenced by Scandinavian social democracy. Washington's politics are quite similar to Minnesota's – both states were settled by Scandinavians who shaped the political institutions. This has meant fairly liberal politics, strong labor unions, and a vigorous two party system.

Washington was once so liberal Roosevelt's campaign manager referred to it as the "Soviet State of Washington." Democrats dominated the state in the post war years, with two Democratic senators, Warren Magnuson and Henry Jackson, who between them served 87 years. But Republicans managed to elect a number of popular governors, including Dan Evans who served as governor and senator over 25 years.

The *Almanac of American Politics* described contemporary Washington politics as follows:

> In today's Washington, the fulcrum of the electorate has moved from blue collar to white collar, from economic class warfare to cultural wards between liberals and conservatives. Washington moved toward the Democrats in the

1980s, and Michael Dukakis 50%-48% victory here forshadowed Bill Clinton's 43%-32% win in 1992, with a big 24% for Ross Perot. The Democratic trend swept down the ballot: Seattle liberal Patty Murray was elected senator and Mike Lowry governor, and Democrats won eight of the nine House seats, winning the house vote 56% to 41%. Then in 1994, the pendulum went the other way, Republican Senator Slade Gorton was re-elected 56%-44%, and Republicans won seven of the nine House seats, carrying the House vote 51%-49% – a 10% gain. Most startling was the defeat after 30 years of House Speaker Thomas Foley.

Washington's dramatic two party politics continued in 1996, when Democrat Gary Locke was elected governor, the third Democrat in a row, and yet Republicans won control of both houses of the State Legislature (they had won the lower house in 1994) for the first time in 16 years. The GOP also held six of the nine U.S. House seats.

Washington's politics put a lie to the argument that an open "blanket" primary somehow inhibits two party competition. Consider the following:

- For nearly 40 years Democrats held both U.S. Senate seats. Then in the 1980s, Republicans managed to win both seats. They are now divided among the two parties.
- From 1952 until 1964, Republicans held a majority of the U.S. House seats; from 1964 until 1994 Democrats held a majority; in the last two elections Republicans have won a majority. Six of the nine House seats have changed parties in the 1990s, one seat twice!
- The Washington House of Representatives went from 65 Democrats; 33 Republicans after the 1992 election

to 61 Republicans and 37 Democrats after the 1994 election. The current House of Representatives is 56 Republicans, 42 Democrats.

Any allegation that the blanket primary inhibits women and minorities from winning office is also refuted by Washington's experience:

- Washington is the only state to have nominated minorities for top office in the last two elections. Ron Sims, a black Democrat, won 44 percent as the Democratic nominee for the U.S. Senate in 1994. Gary Locke, a Chinese American Democrat, was elected governor in 1996. This is in a state that is 90 percent white! Six of the 149 state legislators are minorities. The percentage of minority legislators (4%) is below the state percentage of minorities (10%) because the only concentration of minority voters are found in downtown Seattle.
- Washington has the highest percentage of women in its legislature of any state – 39 percent. Washington's U.S. House delegation has included a women since at least 1952; currently two of the nine members of Congress are women. One of the two U.S. Senators is a woman, as is the state attorney general. The Republican nominee for governor in 1996 was a woman, who beat several men in the blanket primary for the Republican nomination.

Washington has no party registration.

Section Five

ACTIVITIES OF THE POLITICAL PARTIES

Despite historically weak party organizations, the parties do have one advantage in California politics. Because of their tax status, they are able to mail political literature at reduced mail rates. Therefore, it has been a common

practice of political consultants to use the party's mailing permit for much of their direct mail campaign activity. A party paid mailer is also able to give a candidate some cover if the mailer is a negative mail piece critical of the opponent. In the 1996 election, the Democratic State Central Committee paid for a large number of negative mailers in targeted districts.

The parties are also effective fundraisers; presidents and governors often appear at party sponsored fund raising dinners.

Among the other activities undertaken by state and county central committees are:

- Voter registration efforts
- Get out the vote drives on election day
- Conventions and the adoption of party platforms
- Mailing of materials urging a vote for the party's candidate and ballot positions
- Sponsorship of debates, periodical meetings, organizational efforts.

None of these activities constitute exercise of any political authority; the fund raising and campaign spending is largely a "passthrough" in support of the party's candidates. All these activities are organizational in nature, intended to increase the electability of the nominees of the party, and none are interfered within any way by Proposition 198.

What then is the *burden* imposed by Proposition 198 on the political parties? There is none; the party central committees may still meet, debate issues, raise funds and

do the other non-policy chores they have done for a century. Their political power is not diminished by Proposition 198 because they have no political power. The burden, if there is any, falls on statewide candidates and legislators who must appeal more broadly in the primary election, and thus campaign to a larger constituency than was the case under the closed primary. This burden, however, does not fall on the parties.

* * *

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

[Caption Omitted In Printing]

[637] THE WITNESS: Mervin Field, F-I-E-L-D.

DIRECT EXAMINATION

BY MR. RICKARDS:

Q. Good morning, Mr. Field.

A. Good morning.

Q. Sir, what is your occupation?

A. I'm a public opinion researcher.

Q. Okay. Are you connected with Field Poll?

A. That's correct.

Q. All right. Are there a number of organizations that are connected with that effort?

A. That's correct. The – in 1946, Field Research Corporation was established, a general practice market and opinion research agency in California, and in 1947, the Field California Poll was established. And in 1976 the Field Institute was established.

Q. And could you explain briefly, if you would, the differences between those entities and what hat you're wearing today?

A. All three are survey research organizations. Field research Corporation is the so-called mother [638] ship. It is a fairly large general practice market and opinion research agency that undertakes contracts for proprietary

studies for companies, for government agencies, and other entities.

The Field Poll and the Field Institute is an independent nonpartisan public policy organization. We do studies on voting, public policy, studies that are financed by media, by foundations, by subscribers, and academic institutions. We do not work for party interests, either political parties or interests that have a cause in a ballot proposition campaign.

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[642] MR. RICKARDS: Your Honor, for your information, the questions which are on the left side of that chart and the number, that can be found at page 7 of the report.

Q. I wonder if you would just now go through this chart for me and explain to me what you did and what the results were?

A. Well, that chart is one finding from more extensive findings where we are covering issues in respect to how the public felt about the political parties, how they felt about being independent or being a firm party supporter, whether they followed government and public affairs, and why they voted, and a number of other aspects to the party and the electoral process.

In that measure, we posed four possible primary election system changes. The top one, as you can see, we changed the primary system so that [643] voters who declined to state a party affiliation can vote for each candidate in a primary election. Seventy-three percent say they would adopt that change. Again this is in 1983.

The second measure was change the primary system so all candidates for an office are listed together on the same ballot regardless of party, and 69 percent favored that change.

Then we come to the third one, which has a great deal of similarity to the measure on which voters voted in last year's primary election, and the the question was in a sense posed change the primary system to an open primary where voters choose from among the candidates of all the parties and each party's top vote-getter becomes its nominee in a general election.

At that time, again in 1983, 66 percent of the people said adopt that change.

In the last issue we posed change the primary system to a nonpartisan primary where voters choose from among candidates without party designations and the top two vote-getters compete in the general election. There at that time, the voters rejected that change. They said – 53 percent said keep that present system and just 39 percent say adopt the [644] change.

* * *

[645] Q. Okay. I think probably you explained this, but what sort of conclusions did you draw from these responses?

A. Well, the conclusion I drew, as it relates to Prop 198, that there was remarkable consistency over a 13-year period, and that when the vote on Prop 198 was in, comparing that with the study that we did then 13 years prior, it showed that this concept, as it's posed here, and

as it was posed in 198, struck a deep-seated cord with the voting public.

* * *

[650] Mr. Field, this is a chart entitled how [651] Democratic and Republican Registered Voters Describe Themselves.

I wonder if you could indicate to me what polling this represents and what the figures are?

A. First, those percentages should be read vertically, and each of those columns add to a hundred percent.

The classifications come, again, from our aggregated poll data. As I stated, we take anywhere from 5,000 to 8,000 interviews a year in our statewide polling, and we ask the public – we ask voters how do they identify themselves. Do they identify themselves as a strong Democrat or not strong Democrat, or do they not identify with the party at all. And we find that among registered Democrats, 41 percent identify as a strong partisan, 36 percent consider themselves as not strong partisans, and 23 percent do not identify with a party, they identify as an Independent or something else.

Among Republicans, it's 44 percent who identify them as strong Republicans, 32 percent as not strong Republicans, and 24 percent registered as Republicans but they don't identify with the Republican Party.

[652] Q. Let me ask you, if you would, Mr. Field – I'll give you again what's L-4. If you could comment on these two charts, how the Democrat and Republican registered voters describe themselves, the partisanship

point, and the self-identification compared to registration.

What conclusions do you draw from these?

A. Well, the conclusion I draw are that voters, irrespective of how they registered, do not have – they're not strongly identified with the party. I would say you don't see this sense of solidarity. The fact that they're describing themselves as Democrats or Republicans, and that they – the parties, the rank and file party members, I would say, are not strong partisans, and tend toward being independent.

We see that, in addition to these charts, repeatedly in our surveys people will say that I don't vote the party, I vote for the candidate, and I consider myself independent.

For example, in our 1983 study, which I showed earlier, and we found in subsequent studies, they would rather describe themselves as independent rather than being a party member.

* * *

[658] A. Well, in this report, and in numerous reports that we have produced, we see that participation has been declining steadily over the years. This in the presidential election in California, in the general election, it was just a little more than 50 percent. In the primary in '96, the participation rate was just a little over 30 percent. Typically, in nonpresidential elections recently, the participation rate in general elections has been around roughly 45 percent, give or take a few percentage points. And in the primary, it's sometimes a little less than 30 percent.

And that represents a decline, a marked and significant decline over the last 30 years.

Q. Can you give an opinion, and expert opinion based on polling you've done as to whether or not you think it's likely that the blanket primary will increase voter participation?

A. Well, I think that when you offer voters more choices, and given the fact that those who don't affiliate with major parties will be able to vote, and that's a significant segment of voters, that you [659] will get more voters. How many more, I do not know.

The one problem that we have, and what I've noted, and I think other scholars have noted with dismay, is that with this continual decline, that you would hope that there would be some events, some mechanisms that would galvanize the public to participate.

But looking at the possible implications of an open primary, you would have to assume that there would be more voting because, first, the people who don't affiliate with any major party would vote. You also would get people from either party. If it's an uncontested election, there's a tendency for them not to turn out, not to participate. But if the process is opened up and more candidates are offered, that would have a strong tendency to stimulate more voting.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

[Caption Omitted In Printing]

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[842] THOMAS ANTHONY QUINN,

a witness called by the Defendants, having been first duly sworn by the Clerk to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. SUMNER:

Q. Mr. Quinn, can you tell how you're currently employed?

A. I'm a consultant with Goddard Claussen Public Relations here in town.

* * *

[845] Q. That's exhibit I. Let me ask you about Proposition 198. You've taken a look at the Los Angeles Times poll and the Field polls on Proposition 198, have you not?

[846] A. Yes, I have.

Q. Okay. Did the Los Angeles Times poll address the vote of minor parties?

A. It's not entirely clear. In the Los Angeles Times poll is how Republicans voted, how Democrats voted, and then how independents voted. I took a look at the actual breakdown of who cast ballots in the 1996 primary.

Ninety percent of the ballots were cast by the two major parties. Three percent of the ballots were cast by the eight minor parties, seven percent were cast by nonaffiliated voters.

It is possible that as a – if you're doing an exit poll, if a hundred people come out of the voting booth, three people may be members of these minor parties, and their opinions would have been asked. I suspect, although I do not know, that the Los Angeles Times may have included that among the independent category. Which, by the way, showed that it passed among that category of voters.

Q. A catchall category?

A. That's right.

Q. Given that rather limited base of information, do you have any opinion as to how the minor parties may have voted on 198?

A. There's no way to –

[847] MR. PARRINELLO: I would like to object. There's no basis for him to render an opinion on that point because he doesn't know based upon the data provided.

THE COURT: Overruled.

THE WITNESS: My sense is that on organizational issues, these minor parties probably vote much like the major parties do. Where they differ are on ideological issues. So it would be my opinion that they probably, as with all other voter groups at least tested in the L. A. Times exit poll, voted in favor.

Q. BY MR. SUMNER: And you're characterizing Proposition 198 as an organizational issue?

A. Yes, how you organize the parties.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

[Caption Omitted In Printing]

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[505] DAVID OLSON

a witness called by the Defendants, having been first duly sworn by the Clerk to tell the truth, the whole truth, and nothing but the truth, testified as follows:

THE WITNESS: David Olson, O-L-S-O-N.

* * *

Q. Professor Olson, where are you currently employed?

[506] A. University of Washington in Seattle.

Q. Can you briefly go over your professional experience since receiving your Ph.D., please?

A. I joined the faculty at Indiana University and served there for five years. I joined the faculty at the University of Washington in 1974, and I have been at the University of Washington since.

* * *

Q. And have you been the chair of the political science department there?

A. For most of the 1980s I chaired the department.

* * *

[513] Q. Sir, is it your testimony – okay. So your testimony is that the crossover voting has not significantly altered the outcome of a primary race in Washington?

A. That's correct.

Q. Now, I know that in several of the prior testimony there have been references to the Dixie Lee Ray race in Washington. Could you clarify that race, go over it and what had happened in that race?

A. Well, I think I should probably – I entered my definition of crossover voting, and I wanted to be very specific about that.

With respect to my definition, how I'm conceptualizing, how I'm using the concept of raiding, is where individuals move from their normal and usual column into the opposition column which they usually and normally don't vote in with the intention of undermining the prospects of candidates in that column that they've moved into. So that raiding has the intentionality of decreasing the eventual electoral prospects of candidates who are going to be eventually faced in the general election.

You've asked about one of the cases that has been raised here. The argument has been made that [514] the conservative Democratic candidate, Dixie Lee Ray, received not just the crossover votes of the more liberal Republicans, but of such a volume that it put her over what otherwise would have been the winning candidates in that gubernatorial primary in the Democratic primary.

There were three candidates in the Democratic column. One, Marvin Derling, a very liberal environmental

lawyer, had carved out a niche in the Democratic Party. The second candidate was Len Sawyer, a former Speaker of the House of Representatives and a quite conservative Democrat.

Dixie Lee Ray, came to this election with considerable strengths. She had been a longtime faculty member at the University of Washington. She had taken a 12-year leave of absence from the University of Washington. I remembered exactly. Because of her, the university refuses now to allow any of the rest of us to take more than a two-year leave of absence.

She was on leave of absence for 12 years. She served as the director of the Pacific Science Center from the opening of the Worlds Fair in Seattle in 1963 forward. This was a statewide institution offering scientific education particularly to [515] children and adolescents that gave her a television show that she regularly provided commentary on science. She was appointed by Richard Nixon as the first woman to chair the Atomic Energy Commission.

And so Dixie Lee Ray was a very prominent, very highly regarded conservative Democrat, who wins the Democratic primary. She very well could have gotten crossover support from liberal Republicans in this race. But what's instructive to me is that she goes on in the general election and wins the general election in 1976.

What I see in this case from my familiarity with the three candidates in the Democratic column, and the dynamics that went on in that election, is that a highly visible, name-familiar conservative Democrat received a degree of support from liberal Republicans, and who

later went on in the general election to retain that support from liberal Republicans and to win the gubernatorial race of 1976.

Is this raiding? Not by my definition. Not by my conceptualization. The Republicans who moved over were not of mischievous intent. They weren't trying to sabotage. They were not trying to undermine a candidate. They were intentionally [516] expressing a preference for a visible and what I consider to be in their case a preferred candidate.

* * *

Let me provide the two arguments, even though I'll be shorter on the argument that was a raid because it's just been given by Professor Costantini.

We're in the Great Depression. There's an incumbent governor, Clarence Martin. He's a Democratic. He's a fairly conservative Democrat. [517] He's opposed in that Democratic primary by John Stevenson, who was a more liberal Democrat.

The argument that this was a raid is that the incumbent governor did prevail in the primary, and it appears that he did receive crossover support from Republicans, and particularly that he received independent votes in the 1936 election, which by my definition are not raiding or crossovers.

So my version of this event is that here's a case of a well-known and quite popular incumbent Governor who defeats an opponent who's to the left of him in the primary and who carries considerable strength within the Democratic Party itself. But Clarence Thomas – Clarence

Martin prevails with the support of Republican crossovers and with the support of independents.

What's interesting is, not unlike 1976, after prevailing in the Democratic primary, he goes on in the general election to win. Now, for the this to be raiding, there had to have been an absence of viability in the Republican Party for Republicans to move massively over to the Democratic column in the primary.

* * *

[519] Q. Could you cite to any recent example where an election would have been ripe for raiding but raiding did not occur?

A. Well, I think that the 1996 presidential preference primary in the state of Washington. We held our presidential preference primary on the exact same date as the state of California. And it's simply remarkable. This is fairly late in the [520] campaign season. It was not definitive by this time period in March of what the outcome was going to happen with the Republican Party's nominee. But it was well known who the Democratic Party nominee was going to be.

Bill Clinton had the grand opposition of Lyndon Larouche, who yesterday we heard had been determined by the DNC not to be a qualified opponent, had a very long list of opposition candidates to Bob Dole in Washington presidential preference primaries.

So here we got a situation. We've got six or seven – I don't remember the exact number off the top of my head, but –

* * *

[521] THE WITNESS: On the Republican column, we had Dole, Buchanan, Forbes, Keyes, Alexander, Gramm, Lugar, Dornan.

Now, this is a situation that is perfectly positioned for the raid.

In the Democratic column, Clinton has got not just this presidential preference primary, but he's got the nomination locked up by this time. His only opponent in the state of Washington was Lyndon Larouche. So there's every incentive, if raiding is a common, usual occurrence, that it ought to occur in this case where the Democratic Party would use by its strategists the movement, direction of voters over to pick the weakest candidate or candidate who can create mischief in the Republican column.

What I find interesting in this blanket primary, voters are given the option of voting as unaffiliated voters and to also have the option of voting as declared Democrats.

So you have got a actual laboratory here of closed primary taking place simultaneous with a blanket primary. The closed primary are the declared Democrats and the declared Republicans. [522] They have to declare that they are Republicans or Democrats to get the ballot.

You also have the right to vote in this primary by the unaffiliateds. It, in effect, creates a blanket primary effect.

What's interesting here is that the closed primary voters here, the declared Democrats, support Clinton at about the same rate as the blanket primary Democrats.

THE COURT: Are they getting different ballots?

THE WITNESS: They're getting different ballots.

THE COURT: So the declared Democrat would not get the Republican names.

THE WITNESS: That's correct. The declared Democrat gets a ballot that just has Larouche and Clinton on it. The unaffiliated voter gets a ballot that has both of the Democratic candidates and all of the Republican candidates.

So we've recreated here a laboratory that comes very close to the closed primary versus the blanket primary.

What's interesting about this is Clinton does as well in the closed as the blanket. Dole does [523] nearly as well in the blanket as he does in the closed. His margin is eroded in large part by Steven Forbes' better performance in the blanket primary, the unaffiliated voters. But still, between 58 percent and 63 percent of Dole's margin between the closed and the blanket, or as they're labeled here, the declared and the unaffiliated, is ever so marginal.

The last point here that I think is terribly important, if you look at the total turnout across the two parties, Washington is a very competitive two-party state. The total turnout for the Democratic candidates is 329,000 plus. The total turnout for the Republicans is 335,000 plus.

So what is happening here, with the greatest opportunity to engage in strategic voting, there appears to be no evidence of that taking place in this particular case.

And, surely, there is no evidence of raiding that is taking place by these more recent data.

• • •

[543] Q. Okay. And Dixie Lee Ray then as it turned out – I guess this could not conceptually be a case of raiding for you because Dixie Lee Ray did not turn out to be the weakest of the opposing party's candidates?

A. Right.

Q. So the fact she won means by definition there was no raiding in that race, correct?

A. Yes. That's – it's an important point in this case that the winner of the primary sustains that base of support and goes on to win in the general.

[544] And if we look at the Alaska 1974 case, the exact same thing is happening. J. Hammond wins the Republican primary, goes on to win the general. If we look at the 1936 election, Clarence Martin wins the primary, goes on to win the general. In all three of these cases that we focus so much attention on, this dynamic holds true.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

CALIFORNIA DEMOCRATIC PARTY, et al.,

v. (Filed Dec. 4, 1997)

CASE NUMBER:
CIV S-96-2038 DFL PAN

BILL JONES,

XX – **Decision by the Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER OF 11/24/97.

Jack L. Wagner,
Clerk of the Court

by: /s/ C. Di Lillo
C. Di Lillo, Deputy Clerk

Supreme Court of the United States

No. 99-401

California Democratic Party, et al.,

Petitioners

v.

Bill Jones, Secretary of State of

California, et al.

ORDER ALLOWING CERTIORARI.
Filed January 21, 2000

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 3, 2000. The brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 31, 2000. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 17, 2000. Rule 29.2 does not apply.

January 21, 2000